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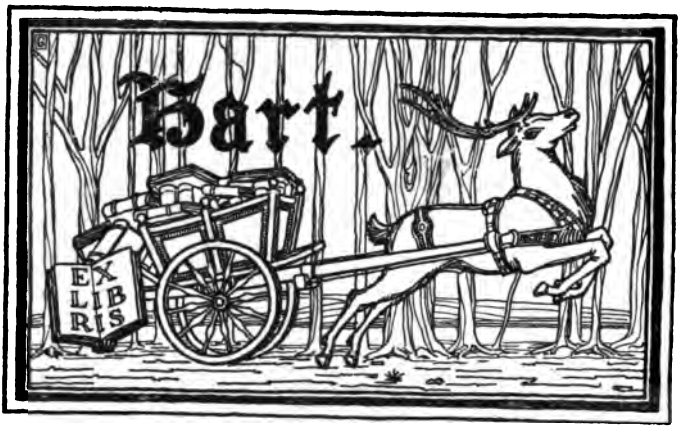
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GOVERNMENT IN STATE AND NATION

GOVERNMENT IN STATE AND NATION

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PREFACE

THE subject-matter herewith presented partially represents the plan pursued by the authors as teachers of civil government for a number of years in secondary schools. A study of the actual methods by which the affairs of government are conducted gives constant interest to the work, and consequently the practical side has been emphasized. Many problems besides those presented in the supplementary questions may be worked out from the official reports.

Scarcely a month passes without the appearance in the more noted magazines of articles on phases of governmental activity which have permanent value. No attempt has been made to give references to all of this material which has appeared during the past ten years. The ability of the reader has been kept constantly in mind and the intention has been to refer only to such articles as would be of value to students in high schools, academies, and normal schools.

We are under especial obligation to some of our friends for their critical reading of certain chapters of the manuscript. Among others whose aid we thus desire to acknowledge are: S. E. Sparling, University of Wisconsin; E. A. Greenlaw, Northwestern University;

Victoria A. Adams, Calumet High School, Chicago; A. C. Shong, West Superior High School, Wisconsin; F. R. Clow, State Normal School, Oshkosh, Wis.; H. W. Thurston, Chicago Normal School; G. O. Virtue, State Normal School, Winona, Minn.; E. C. Page, State Normal School, DeKalb, Ill.; and Arnold Gesell, High School, Stevens Point, Wis.

EVANSTON, June 1, 1901.

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SOME SUGGESTIONS TO TEACHERS

We trust the following observations may be of value to teachers in the use of this book, and at the same time answer certain questions which we are assured will arise.

1. There are but few questions given on the subject-matter of the text, for each teacher will doubtless prefer to present the topics in his own way. While some of the discussions and many of the suggestive questions are intended to make students realize more completely their duties as citizens, many more having a local bearing will occur to teachers. "Topical outlines" are omitted, for by the aid of the marginal topics students will be able to make outlines for themselves which will be of vastly greater interest and value.

2. All teachers may not care to use the parts of the book in the same order, and the arrangement is such that either Local (Part I) or National government (Part II) may be studied first. In the work on local government, it is not expected that the student will *learn* all of the different practices found in the various States, but that he will compare them with those of his own State.

3. There are more supplementary questions and references, doubtless, than can be used by any one class, but this will give the teacher an opportunity for selec-

tion. A number of the references may be used each day by assigning special problems to individual students.

4. It is scarcely to be hoped that all of the books and magazines mentioned will be found in any high-school library, but the need for supplementary reading is being met through the rapid increase of public libraries. Great care has been taken in selecting the books which are given in Appendix C, and by adding a few of these each year a working library on the subject of Civics may soon be secured. Many of the reports issued by the government may be readily obtained by applying to your Congressman or to the government officials.

5. Some teachers may have difficulty in securing the periodical literature.* In nearly every village there are persons who have subscribed for these magazines for a number of years and would be willing to present them to the school library.

* For key to magazine literature see Appendix B.

INTRODUCTORY CHAPTER

NEED OF GOVERNMENT

THE control of our actions by some kind of government precedes our earliest recollections; this we have constantly experienced in the family and in school. Wherever men live in communities they are under political government; their relations with one another must be regulated by well-understood rules in order that they may live and conduct business in security. By means of political government, also, communities find it convenient to increase the comforts of life, as in the building of good roads and streets; they furnish themselves with the means of education and culture through schools and libraries. For such purposes the government of town, village, and city is of the first importance. But business and political relations exist among communities, as well as among individuals. Consequently, our local governments must be supplemented by organizations that cover larger areas and include many communities; therefore the county and State governments are formed. For the same reasons, and also for reasons of which we learn in the study of United States history, a government for the United States became a necessity at the very beginning of our National life.

In these various political organizations the plan of

government is the same. In the first place, there is always the law-making body, prescribing the regulations to which men must subject themselves if they are to live together in harmony. Again, because laws do not enforce themselves, officers are selected to see that these provisions are carried out. Finally, since men frequently disagree as to the meaning of laws, and because there are always those who wilfully violate them in order to secure some personal advantage, courts are established in which the laws are interpreted and offenders are judged. We have, then, the three departments of government—legislative, executive, and judicial.

The system of local government to which you are accustomed did not grow up spontaneously, nor was it established arbitrarily. There are reasons to be found in history and in the nature of the environment which explain many of its details. The same may be said of our State and National systems. In consequence, we shall find it advantageous to trace briefly some historical origins of government in our country. Again, it is evident that no system of human government is perfect. In every community the defects of laws and their non-enforcement are familiar topics of discussion, while the failures of State and National governments at certain points are no less conspicuous. These are the problems to which our attention will be directed in the course of our study.

For the most part, however, it will be our task to study *government as it now exists* in town and city, State and Nation. We shall look backward into history only when this is necessary for the understanding of

our present forms and practices. We shall look forward to the solution of a few of the simpler problems that now confront us. A study of the deeper origins and of the more profound problems must be postponed to the years of advanced work in college.

PART I

LOCAL GOVERNMENT

CHAPTER I

TOWN AND COUNTY GOVERNMENT

When, in the seventeenth century, Englishmen made settlements along the Atlantic coast, some form of local government became an immediate necessity. They adopted consequently the political usages to which they had been accustomed at home, selecting those offices and forms of procedure that seemed best adapted to their needs and surroundings. Because natural conditions and the ideas of the settlers varied considerably in the different colonies, we find several varieties of local government growing up. But since these local governments were all established by Englishmen, and, moreover, by Englishmen of very similar habits and social grades, we find, on the whole, great similarity in their fundamental features.

The most marked differences are seen in a comparison of local governments in New England and in Virginia. The settlers of New England found themselves upon a coast indented by many bays and harbors; the country was hilly and the soil stony; streams were abundant but generally small, rapid, and unfit for navigation; the sea abounded in fish and the forests yielded excellent timber. These physical conditions hindered the

New England conditions.

rapid spread of population over large areas and offered many inducements for the gathering of the inhabitants into towns. Moreover, this tendency was in accord with the wishes of the Puritans. They desired, above everything, to foster the religious life of the little church communities into which they grouped themselves. They believed that all settlers should take an active part in worship and in the government of the church, and that consequently all should live within a short distance of the meeting-house.

Under these circumstances the New Englanders put into practice those features of the ancient English township government that were best suited for governing their little towns. Once a year, or oftener, the voters assembled in town meeting to elect officers and to engage in general discussion of town affairs. Here taxes were levied, and the support of the poor, the maintenance of highways, church, and school were provided for. The officers of the town were the selectmen, a board having general oversight of town affairs, the treasurer, clerk, constables, school committee, assessors, fence-viewers, and frequently many others. The remarkable features of New England town government were the freedom with which all matters of public interest were discussed in the town meeting, and the care with which all affairs of government were guarded by officers and people alike. Early in the history of the Massachusetts Bay Colony towns were grouped into counties, and justices were appointed who held court in the towns of each county. Scarcely any but judicial matters were intrusted to the county government. The centre of political life in New England was the town, hence we have here the town or township type of local government.

The town type.

A very different type of local government was de-

veloped in Virginia. If we contrast the physical geography of this section with that of New England we see how every inducement favored the scattering of population and the development of great plantations. The influence of tobacco cultivation and of slavery was in the same direction. Since the desire for individual gain prompted most of the settlers, there were no strong ties tending to bind the people into compact communities. There were scarcely any towns in Virginia. Consequently the settlers were driven to select those features of English local government that were best adapted to their sparse settlements.

Virginia local government.

The local organization corresponding to the town of New England was the parish. The vestry, a group of officers originally elected by the members of a church, was given control of matters relating to the church and the poor. Other functions of local government were placed in the hands of the county court, a body composed of justices originally appointed by the governor of the colony. The county court administered justice, but it also had important legislative functions, for it levied taxes for county purposes, maintained highways, and exercised general control over such affairs of local government as were not in charge of the vestry. Its authority extended over the county, which was sometimes divided into two or more parishes. The other important county officers were the sheriff (who, besides being a court official, was county treasurer) and the lieutenant, or commander of the militia. The original method of appointment in both vestry and county court was changed so that members came to be chosen in each case by the body itself. Thus there appear the two striking features of Virginia local government; first, the conduct of affairs by select bodies of men without the active participation of the mass of voters; second,

The vestry.

The county court.

The county type.

the exercise of the principal functions of local government (those concerning taxation, police, highways, judicial matters, militia) by officers of the county.

There is a third point of contrast between this, the county system and the town system of New England. In the latter the towns sent deputies to the Colonial Assembly, while in Virginia members of the House of Burgesses were sent from the counties. In both cases the voters elected these officers.

Contrasts between the two types.

The New England type of local government gave the people much practical political education; while that of Virginia developed a class of intelligent, public-spirited leaders. These facts are of great consequence in colonial history, especially in that period when resistance to the English Government made Massachusetts and Virginia leaders in the Revolution.

The middle Atlantic colonies present a medium in climate, soil, and physical structure between the extremes of New England and Virginia. This is also true of the methods of settlement and the occupations of the people. Similarly, the type of local government developed in these colonies seems to be a compromise between the two types that we have been considering. It has been called the mixed or township-county system of local government. Like New England, the middle colonies had both townships and counties, but there was a much more equal division of powers between these units. At the same time, the county was not so important as in Virginia. In New York the township was more prominent than the county, while in Pennsylvania county officers performed the most important functions.

The township-county type.

The colonial systems above described have been much modified. In New England it has been found convenient to enlarge the functions of the county and to diminish those of the town. In Virginia and through-

out the South the township has become an increasingly important organization. Still, in each of these sections the system of local government now in use bears the stamp of its origin.

In the Western States, the character of local government has been greatly influenced by the origin of the settlers. The general trend of population, as it moved westward from the thirteen original States, was along parallels of latitude. The three types of local government were therefore perpetuated, in some degree, in the Western States. In the South we find the county type prevailing. Nowhere, however, does the pure town type exist, for the Northern States all have the mixed system. These States may be divided into two groups according as the town or the county is given more extensive functions. The States in the first group (Michigan, Illinois, Wisconsin, and Minnesota) have been influenced by the examples of New England and New York. In these States there is the annual town meeting of voters, where officers are elected and matters of town government are discussed. We have here the form of a pure democracy. A town board has general charge of town affairs. In the second group (Ohio, Indiana, Kansas, Missouri, Nebraska, Colorado, Oregon, and California) the county is of more importance in local government. There is no town meeting. A town supervisor (or board of supervisors or trustees) exercises some powers that would be exercised by the town meeting in other States. But here the county board exercises more of such functions; it has extensive powers over the poor, health, highways, taxation, etc. In all the Northern States there is a group of other town officers besides the supervisors—clerk, treasurer, assessor, constables, and various minor officers and boards.

Local government in the West.

The legislative authority of the county in both groups

of Northern States is the county board. In the Southern group the members are elected at large or from districts of the county. They are few in number and are called commissioners. Elsewhere in the North the members of the county board, called supervisors, are elected to represent the towns, villages, and the wards of cities. This supervisor system of county government originated in New York in colonial times. The county is the basis of court organization; so there is a judge, a sheriff, and a clerk of the court. Frequently we find several counties grouped into a district or circuit throughout which a single judge holds court sessions.

Commissioner vs. supervisor system.

In some cases taxes are collected by the sheriff, but generally there is a county treasurer. Other county officers, most of whom are elected by the voters, are the superintendent of schools, the register of deeds, or recorder, the surveyor, and the coroner.

As population becomes dense in certain localities, villages and cities are organized. Village government is sometimes entirely distinct from town government; sometimes it is united with the latter for general purposes, though sustaining its own officers for special purposes. In either case the governing body is a board with an executive head, generally called the president.*

Villages.

Cities have governments similar in general plan to those of villages; but there are more officers and their functions are more extensive. The conditions of city life give rise to new problems of government to which we shall give attention in a separate chapter.

Cities.

Such, in bare outline, is the organization of local government in the States to-day. In the actual processes by which local government is carried on, towns,

* Various terms are in use. In Pennsylvania there is the borough with a burgess at its head. In Virginia the corresponding organization is the town, with a mayor as executive officer.

villages, and cities (or divisions of cities called wards) are regarded as divisions of the county. Counties are themselves divisions of the State. Now, there are some activities of government in which the local units alone are concerned, as in the maintenance of roads, streets, and bridges, and the care of the poor. But in many important matters the processes merely begin in the local units and are completed by the action of State officials. For example, taxation and election processes involve both local and State governments. The same is true, in many cases, of the administration of justice and the maintenance of school systems. Hence, it will be necessary to take a general view of State government before considering how these operations are carried on.

Supplementary Questions and References.

1. The following references give the history of local government in the colonies:

Thwaites, The Colonies, 55–58; Fisher, The Colonial Era, 60, 99, 167; Channing, The United States of America, 37–38; Wilson, The State, 449–458; Lodge, A Short History of the English Colonies, 48–49, 58–59, 414–417; Hart, Formation of the Union, 11–13; Bryce, American Commonwealth, I, 561–565 (589–593);* Bancroft, History of the United States, I, 285–286, 449.

For descriptions of local systems as they are at present, see Bryce, I, chapters 48 and 49; Wilson, The State, 524–538.

2. Make a study of a town: (1) With a map, as to its location, size, and shape.† Compare with other towns in the same county. (2) What officers has the town? For what terms are they elected? How are they paid? What

* References to Bryce are given in duplicate; pages enclosed in parentheses refer to the third edition, 1896.

† In the West, the Congressional township, as determined by the United States Land Survey, frequently determines the boundaries of the town. See pp. 329–332.

general duties does each have? Is the town board a legislative or an executive body? (3) Is there a town meeting? If so, what business does it transact? Did you ever attend one?

3. Study the organization of a village government. In what respects does it differ from the town government? Why?

4. What is the area and population of the county in which you live? What is the county seat? Have you visited the county buildings? Who has charge of them?

5. How many townships are there in your county? Estimate the total number of local officers. How many counties are there in your State? Are they generally regular or irregular in shape? Compare counties of other States. (See Atlas.)

6. Make a list of your county officers, the length of term and salary of each. What are the principal duties of each?

7. Is the county board elected on the commissioner plan or the supervisor plan?

8. To which type of local government does the system of your State most nearly conform? Account for its origin.

9. In some States more than one system of local government is in operation. Account for this. Bryce, I, 572 (600–601).

CHAPTER II

STATE GOVERNMENTS

As town and county governments in the thirteen colonies were modelled upon ideas and practices derived from England, so the central government of each colony took form upon the plan of England's central government. And this plan may be seen to-day in the governments of our States and in that of the United States: all have the division into three departments—legislative, executive, and judicial—the legislature generally being composed of two branches. There were many variations among the colonies in the details of government, but at the time of the Revolution there was one important point of likeness: viz., each had an elective representative assembly. Moreover, it had become established in practice that the assembly should legislate upon matters affecting the internal welfare of the colony, and especially that it should exercise the vital function of levying taxes. Thus was erected in each colony the form of a free government, while the habit of self-government became established through the neglect of England to interfere seriously with the powers exercised by the colonial assemblies.

Colonial legislatures.

We may further analyze colonial governments by classifying them upon the basis of the method by which the governor obtained his office. There were three forms: Republican, the people electing the governor (Connecticut and Rhode Island); Proprietary,

Classification of colonies.

the governor appointed by the proprietor (Maryland, Pennsylvania, and Delaware); Royal, the king appointing the governor (the eight remaining colonies).

The Revolution transformed the colonies into States, the new State governments being formed in 1776 and the next few years.* It was natural that each of the thirteen original States should build its government upon the basis of a written constitution, for the colonial assemblies and officers had become accustomed to exercising their powers under the superior authority of their charters. So in each State a written constitution seemed necessary as a fundamental law, outlining the framework of State government. The constitution of a State, then, is its supreme law, so far as purely State authority is concerned.† All laws must conform to its provisions; all officers take oaths to support it. The first duty of the State judiciary is to see that all official acts stand in conformity with it.

Written constitutions.

The States admitted into the Union after the adoption of the Federal Constitution (1789) used that instrument as a model to some extent. But still greater was the influence of the old State constitutions upon the settlers from the East who were so rapidly building the new commonwealths of the West. So, while the constitutions of all the present States show, by their great similarity, their common origin, there are variations that may be traced backward along lines of westward migration to their sources in the original States.

Origin of State constitutions.

State constitutions have generally been made in State conventions composed of delegates chosen for that purpose. In some States new constitutions have been made in this way to supersede old ones. When an entirely new constitution has not been considered necessary, amendments have been adopted; these have been framed either by the State legislature or by a State convention. In most cases, whether in the adoption of a constitution or of an

Constitutional conventions.

* Connecticut and Rhode Island continued their charters in force as constitutions.

† For the limitations of State and National authority see Chapter XXX, Section II.

amendment, a vote of the people is an important step in the process.* So it may be said that State constitutions proceed from the people.

The contents of State constitutions may be grouped under three heads. 1. The Bill of Rights, which is patterned after the earliest State constitutions and the first eight amendments to the Federal Constitution. By these provisions the fundamental civil rights of citizens are secured, such as the right of free petition and assemblage, fair trial by jury, exemption from unjust searches and seizures, freedom of religious worship, and freedom of speech and of the press. 2. The outline of the frame of government, showing the organization of the legislative, executive and judicial departments, with general provisions as to their powers and the manner in which they are to be exercised. 3. Miscellaneous provisions. In recent years there is a marked tendency to increase the number of subjects treated in the State constitutions and to make more detailed regulations. Some new constitutions are of much greater length than the old ones, and are really general laws rather than mere frames of government. As a consequence, the powers of State legislatures are curtailed.† Analysis of State constitutions.

State constitutions confer all the law-making powers upon the legislatures. These bodies do not attempt to exercise all such powers, but delegate local authority to other legislative bodies in school districts, villages, towns, cities, and counties. The county board and the city council, for example, are legislative bodies, but they derive all their powers from general or special laws framed by the State legislature. State legislatures are The legislature.

* This was not the case in the adoption of their constitutions by the thirteen original States (except Massachusetts); nor in the adoption of new constitutions recently by South Carolina, Mississippi, and Louisiana.

† See discussion of limitations on legislatures, pp. 12 and 13.

invariably composed of two houses—the Senate and the House of Representatives or Assembly. The first of these houses has a smaller number of members than the second; the members have longer terms than in the lower house, and the qualifications for membership may be higher. Members of the legislature are chosen from districts, and the redistricting of a State is made necessary at stated times by the shifting of population. This is done by an apportionment act. An especially unfair apportionment is called a "gerrymander" (see pp. 153, 154). In all but six States* the sessions of the legislature are biennial; formerly annual sessions were more common. Methods of procedure are quite similar in all legislatures. When a bill is introduced in either house it is put at once into the hands of a committee, where it remains until it is reported back to the house. In the meantime the committee has almost absolute power over the bill—to amend it slightly or radically, to substitute a new bill in its place, or to neglect to report it. Only a few important bills are debated in either house. The passage by both houses and signing by the governor are the necessary steps by which a bill becomes a law.

The committee system.

No State constitution attempts to give a list of the powers of the State legislature, but there is always a list of limitations upon its authority and upon the privileges of its members. These restrictions may be grouped under several heads. 1. They may limit the length of sessions and the method of paying members. 2. Special, local, and private legislation are prohibited upon certain subjects (such as city and corporation charters) and carefully guarded upon others. 3. All financial legislation, such as taxation, and the borrowing and appropriation of money, must be enacted under

Restrictions upon legislatures.

* These are South Carolina, Massachusetts, Georgia, Rhode Island, New York, and New Jersey.

close limitations. 4. The exact procedure for passing bills is prescribed. All these, and frequently many similar provisions, may be viewed in the light of limitations upon the discretion of State legislatures. Moreover, the tendency is to increase, rather than to diminish, the number of these restrictions.* Besides these, too, statute books contain laws betraying the fact that abuses have arisen in State legislatures. These are laws intended to control the practice of lobbying; laws providing the severest penalties for bribery and blackmail; and laws that abolish the pass system. All these facts would seem to indicate that legislators have sometimes been influenced by local and private interests, when these were opposed to the welfare of the public. Yet the people cannot entirely shift the burden of blame upon their representatives, since it is within their power to determine the character of those to whom is delegated the business of legislation. At the bottom it is a question of public morals and public spirit in each locality from which a representative is elected.

Representative government.

We are accustomed to speak of our system as government "by the people"; but it is only in town and school-district meetings that all the voters assemble and legislate directly; and even these meetings do not exist in all sections of the country. Generally, therefore, law-making is a function of representative bodies, which are the village and county boards, city councils, State legislatures, and the National Congress. Hence we have not a pure, but a representative democracy, or a republic It is interesting to inquire how accurately the representatives reflect the opinions of the people. One method of testing this is to ascertain whether the members of a legislative assembly are distributed among the political parties in the same proportions as the voters who participated in their election. Frequently one party has a membership that is entirely out of proportion to its popular voting strength. In the

* Mr. Bryce points out that by these constitutional restraints the people have put a check upon their own hasty or unwise impulses.

election of 1900, the State of Iowa elected, as its entire delegation to the National House of Representatives, eleven Republicans. The combined vote cast for them was 304,302. For the eleven Democratic candidates 212,649 votes were cast; while the Prohibition candidates received 6,151, and the candidates of other parties received 2,826 votes, the total vote being 525,928. The quota for one Representative was 47,811. Hence, had the Congressional delegation been divided proportionally, there would have been six Republicans and five Democrats. In the election of 1898, there were elected to the Assembly of the Wisconsin legislature eighty-one Republicans and nineteen Democrats. The total votes for candidates of the various parties were as follows: Republican, 178,126; Democratic, 131,290; People's Party, 4,475; Prohibition, 2,275; Social Democratic, 1,403; Social Labor, 656 Independent candidates received a sufficient number to make the total vote cast 319,731, the quota for one Assemblyman being 3,197. Proportional representation would have distributed the members as follows: Republican, 56; Democratic, 41; People's Party, 1; Prohibition, 1, total 99. The 100th member would go to the party whose vote gives the highest remainder, after division by the quota.* The ordinary plan of district representation frequently results in large minorities of voters being entirely unrepresented.† Those who think the fault should be remedied advocate numerous plans to bring about "Proportional Representation." One such plan is in operation in Illinois, for the election of members to the State House of Representatives. Each district elects three members, on a general ticket. The voter may give one vote to each candidate, or one and a half votes to each of two candidates, or three votes to a single candidate. The minority, by concentrating its votes on one candidate, may elect him, when otherwise they would not be represented.

Proportional representation.

It has been stated that in few instances do the people assemble

* These illustrations may be extended by the study of election statistics for almost any representative assembly. Many other illustrations are given in the best work on Proportional Representation—the book of that title by Professor J. R. Commons.

† The difficulty is aggravated by the practice of gerrymandering (see pages 153, 154). It is evident that the Republican advantage in Iowa and other Republican States is balanced, so far as the composition of the House of Representatives is concerned, by a corresponding Democratic advantage in other States.

to legislate directly. Yet we may look upon the adoption and amendment of constitutions by popular vote as legislation of a very important character. Similarly, it is common in local government to require that the proposition to create a debt be submitted to popular vote. The questions of licensing the sale of liquor and of adopting municipal ownership are often submitted to the voters. When a town is divided or a village or city incorporated, a majority of the voters must first give consent. Now, the frequent failure of legislators really to represent popular opinions has led to the demand that the practice of submitting laws to the people for ratification or rejection be extended to all important matters of legislation, or that such reference to popular vote be made upon petition of a certain number of citizens. This plan is called the "Referendum." Coupled with this proposed reform is another, the "Initiative," which contemplates the origination of laws by popular action. If a certain per cent. of the total number of voters petition for a law, it must be considered by the legislature, and perhaps be referred to the people. The adoption of the Initiative and the Referendum would bring about Direct Legislation in the matters to which they apply. This system exists in Switzerland, both in the cantons and in the national government. In this country it was adopted in South Dakota, by constitutional amendment, in 1898. Upon the demand of five per cent. of the voters, a proposition must be submitted by the legislature to a vote of the people. If approved, it becomes a law. Any law that has passed the legislature must be submitted to the voters for ratification if five per cent. of them demand it.

The Referendum.

The Initiative.

Viewing State legislation as a whole, and considering the variety of conditions under which our legislatures work, great uniformity of State laws is evident. These laws are based on the same principles and provide for the same general course of legal procedure. But it is a fundamental and very wise feature of our Federal system that each State is free to regulate, in its own way, the affairs with which its citizens alone are concerned. For the interests of the people are most directly under the control of State law. In but few ways do we ordinarily come into contact with the National government.

Spheres of State and National legislation

But the most important business and social relations of life—buying and selling, holding, leasing, and inheriting property; the domestic relations of husband and wife, parent and child; the regulations necessary to make the people secure in health and comfort *—all these fall within the sphere of State government. Hence the necessity that each State shall fit its laws to local conditions.

Uniformity of State legislation.

Yet there are some subjects upon which greater uniformity is desirable, notably bankruptcy, divorce, and commercial law. In these matters the great variety of State laws causes inconvenience and even works positive injury. It is hoped that greater uniformity of legislation may be secured in the future, without destroying that freedom of legislation to suit local conditions which forms one of the wonderful features of our governmental system.

Supplementary Questions and References.

1. For fuller information concerning colonial governments, see Fisher, Colonial Era, 208–211; Sloane, French War and Revolution, 10-12; Thwaites, Colonies, 58–63, 192–193, 271–277; Hart, Formation of the Union, 5–10, 13–17, 80–81; Fiske, Critical Period, 65–69; Channing, United States of America, 26–36, 84–85; Wilson, The State, 458–469.

2. Did colonial governors have the veto power? Hart, 9. What was the governor's power over sessions of the colonial legislature? Twaites, 59. What were the relations of colonial legislatures to royal governors? Fisher, 209–210.

3. Were any State constitutions formed before July 4, 1776? Channing, 84–85. How long did Connecticut and

* "Space would fail in which to enumerate the particular items of this vast range of power. To detail its parts would be to catalogue all social and business relationships, to set forth all the foundations of law and order."—Wilson, The State, 487.

Rhode Island keep their charters as constitutions? Why was this? Channing, 36.

4. What is the history of the framing of your State constitution? Were the framers influenced by the example of another State? Compare the Declaration of Rights with Amendments I–VIII of the U. S. Constitution. Why should these provisions be included in both State and National constitutions?

5. From your State constitution and legislative manual get facts concerning the State legislature—its composition, sessions, officers, etc. Why have two houses in the legislature? Do you think members of the legislature should be required to live in the districts they represent?

6. What are the rules governing apportionments in your State? Was the last apportionment fairly made?

7. What is the process by which laws are enacted? Can you give reasons for the existence of the committee system?

8. In what ways does the constitution place limitations upon the State legislature? Give reasons for each of these limitations. Do they indicate popular distrust of the legislators? If so, for what reasons? Who is responsible for this condition?

9. For general discussions of State constitutions and governments see Bryce, I, chapters 36, 37, 38, 40; Hitchcock, American State Constitutions; Ford, American Citizen's Manual; The last constitution of South Carolina, Rev. of R's, 13 : 66–71; Of New York, Rev. of R's, 9 : 291–295.

10. State legislatures are discussed in Bryce, I, chapter 40; Legislative Shortcomings, Atl. Mo., 79 : 366–377; Pernicious Activity of Legislatures, Pop. Sci. Mo., 57 : 266–267; Decline of State Legislatures, Atl. Mo., 80 : 42–53; Menace of Legislation, N. Am. Rev., 165 : 240–246; Uniformity of State Laws, N. Am. Rev., 168 : 84–91.

11. Efforts to control the lobby are discussed in The Nation, 53 : 136; 68 : 197; 71 : 206–207; New England Mag., 16 : 151–166.

12. What is blackmail? Why should the giving of passes and franks be restricted?

13. Can you mention any matter in which local self-government fails to bring good government? Is the proper remedy to put this matter into the hands of State officials?

14. Proportional Representation, Rev. of R's, 6 : 541–544; 21 : 583–585; Outlook, 55 : 342–345; New England Mag., 14 : 382–385; Arena, 7 : 290–297; Atl. Mo., 84 : 529–535.

15. Direct Legislation, the Initiative and Referendum. Wilson, The State, 310–312; 326–327, 488–490; Bryce, I, chapter 39; Nation, 59 : 193–194; Arena, 17 : 711–721; 18 : 613-627; 22 : 97–110; 725–739; 24 : 47–52; 493–505; 25 : 317–323; Rev. of R's, 20 : 225–226.

CHAPTER III

STATE GOVERNMENTS (*Continued*)

THE general State laws prescribe in many particulars the manner in which local government shall be conducted; as in the conducting of elections and in the processes of taxation and judicial trials. The execution of these laws in any locality is in the hands of the local officers; each of them executes a part of the State laws. Indeed, the greater part of the executive authority of the State is exercised by local officers. The general executive officers of the State are the governor, secretary of state, attorney-general, treasurer, and numerous others. Besides these, there are often boards and commissions. In most States there is a lieutenant-governor who is the presiding officer of the State Senate, but who otherwise has few duties to perform. Like the governor, he is elected by the people for a term varying in length from one to four years.

Executive department of the State.

The powers and duties of the governor may be stated under several heads. 1. He reports to the legislature upon the condition of the State, and recommends legislation. 2. He has power to convene the legislature in special session. 3. In nearly all States a bill must have his signature before it becomes a law. If he vetoes a bill it is returned to the legislature and must be reconsidered; generally, a larger number than a majority is then required to secure its passage. 4. The power of pardoning, or of lessening the punishment of criminals

Duties of the governor.

is generally vested in the governor. In a few States* pardon boards have been created, either possessing this power or sharing it with the governor. 5. He appoints some minor state officers and frequently the members of boards and commissions. Confirmation by the Senate is sometimes required in these appointments. The governor himself is often a member *ex-officio* (that is, by virtue of his office) of these boards.

Besides these specific duties constitutions require the governor to see that the laws are faithfully executed. This may mean that the governor has oversight of the way in which some local and State officers carry out the law; but generally these officers are not subordinate to the governor, and he has no control over their conduct. If, however, the authorities of any locality are unable, because of riot or other public disorder, to carry on the ordinary operations of government, they may appeal to the governor to assist them in the execution of law. This he does by means of the State militia, of which he is commander-in-chief. The presence of a military force may enable the civil officers to restore order, or the commanding officers of the militia may temporarily supersede the civil authorities.

The militia.

In some States the number of State executive officers, besides the governor and lieutenant-governor, is so large that these, with the various boards and commissions, are grouped together into the *administrative* department. The secretary of state keeps public records, including official acts of the governor and acts of the legislature. The State treasurer keeps the money of the State. The attorney-general gives legal advice to State officers, and is lawyer for the State in certain cases. The superintendent of schools, or board

Administrative officers.

* Among these are Maine, Florida, New Hampshire, New Jersey, Pennsylvania, and Illinois.

of education, administers State laws regulating schools, teachers, and school money. The auditor or comptroller has duties in connection with State finances. Other officers or boards control the charitable and penal institutions of the State, and supervise the execution of the law upon certain subjects, such as health, railroads, labor, insurance companies, agriculture, mines, public works. It is customary, also, to have boards of examiners who issue certificates to persons competent to practise medicine, law, pharmacy, or dentistry. Diplomas of graduation from professional schools of good reputation are accepted as equivalent to these certificates.

The protection and welfare of citizens depends in no slight degree upon the administration of law by these officers. By their action, abuses in a county jail or poorhouse may be corrected; an unsound insurance company may be compelled to withdraw from the State; factory hands may secure safe and comfortable rooms in which to work; a contagious disease may be checked; local officers may be compelled to furnish better school facilities or teachers. Even the pleasure of citizens is frequently provided for through fish commissioners, who plant fish in the rivers, and park boards, who preserve forests and streams from injury.

We have now seen that law-making in the State is primarily a function of the legislature, and that much authority to legislate upon local affairs is given to town, village, and county boards and to city councils. We have seen also that these laws are enforced by local officers and by the State officers whose duties have just been discussed. The third department of State and local government is the judiciary. In each State of the Union there is a complete system of courts for interpreting and applying local and State laws. At the head of the judicial system there is a supreme court, or court of appeals, to which cases may be taken from lower courts for

final decision. The highest court is usually composed of several judges, and its jurisdiction covers the entire State. It may either confirm or reverse the decisions of lower courts, or it may order a new trial of a case. At the bottom of the judicial system there are justice courts for hearing cases of minor importance arising in the town, village, or city. Justices of the peace preside over these courts.* Between the highest and the lowest courts there is always one and sometimes there are two or three grades of courts. Each is given jurisdiction within a certain district and over a certain class of cases. Each possesses, in addition, the right to review and control the proceedings and processes of lower courts. Frequently probate business, the settlement of the estates of deceased persons and matters relating to this, is given to a separate court called the probate court.† In large cities a distinct series of courts becomes necessary.

Judicial systems of the States.

Important changes have come about since the establishment of the older State governments in the appointment and tenure of judicial officers. At that time judges were appointed by governors or elected by legislatures, and their terms were for life or during good behavior. With few exceptions judges are now elected by the people for comparatively short terms. Many writers condemn this change, claiming that it has resulted in lowering the standard of ability and integrity among judges. It is said that popular elections make it possible for men of strong political following, not necessarily the ablest and most upright, to secure places upon the bench. Others claim that appointment of judges and life tenure are undemocratic; that the present methods are necessary to secure complete popular government. The judicial, no less than the other branches of government, it is

Popular election of judges.

* In cities the terms "police courts" and "police justices" are used.

† In New York this is the Surrogate's Court.

said, should be brought, through elections, into frequent contact with the popular will.

Some general facts concerning State and local officers are worthy of brief notice. Popular election, rather than appointment, is the rule in local units and for the most important State offices. Hence we have frequent elections and a corresponding opportunity for popular interest in and control of local affairs. Some general considerations.

All important officers are required to take oath (or affirmation) to "support the Constitution of the United States and the constitution of the State of ————, and faithfully to discharge the duties of the office of ————." Officers who have considerable responsibility, and especially those in whose custody money is placed, are required to furnish bonds for the faithful performance of their duties. Compensation of officers is either by salary, by fees, or by a combination of both. The removal of State officers during their terms is generally by process of impeachment. Appointed officers may be removed by the power appointing them, and in some cases local officers may be removed by the governor or by some other State or local officer.

As we study the chapters that follow, it will be well to remember that the source of authority in local government is the State. The machinery of town, village, city, and county governments is created by State law, which endows them with all the powers they possess. Now this makes possible the present tendency toward the extension of State authority into local affairs by way of inspection and supervision, and even by State control. Matters formerly left to local governments entirely are being put under State regulation, either partially or completely. We shall find this true in the stricter supervision of public health by State officials; also in the control, now given to State boards and State and local powers.

officers, over penal and charitable institutions. It is thought by some that State authority might be extended with advantage to the building of roads and the thorough supervision of school systems. By central control in these matters, it is argued, the services of the most capable officers might be secured; the methods employed would be uniform throughout the State, and the best methods would be extended to every section. But centralization of power meets strong opposition in most communities. For the exercise of local powers by local authorities is a fundamental principle deeply planted in the minds of American citizens. From this standpoint it is urged that the conduct of local government should be placed in the hands of officers who are directly responsible to the people most concerned. There results a degree of interest and of participation in local government that brings to the people much valuable education in politics. This problem—the right distribution of powers between State and local governments—is one that deserves attention from citizens who expect to participate in the governmental operations next described.

Should State functions be extended?

SUPPLEMENTARY QUESTIONS AND REFERENCES.

1. Write in parallel columns the titles, names, terms, and salaries of the executive and administrative officers of your State. Make a list of the executive boards and commissions. Indicate whether these officers are elected or appointed.

2. Is the pardoning power wisely used in your State? (See N. Am. Rev., 154 : 50–63.) Has the governor had occasion to call out the State militia? Why should the governor have the veto power?

3. The workings of the executive department in all its branches may be studied from the reports of officers that are printed by the State.

4. Are there in your State societies, semi-official in character, that receive financial aid from the State? What is the purpose for which each society is organized?

5. Outline the judicial system of your State, giving the names of the courts, the composition, sessions, and jurisdiction of each. What are the terms and salaries of the judges? What are the names of the judicial officers in whom you are most interested?

6. Do you favor appointment or election of judges? Short terms or life tenure? See Bryce, I, 483–489 (504–511).

7. Is there a chancery court in your State? What matters do chancery courts consider? What is included under the term "probate business?"

8. Obtain blank forms for official oaths and bonds.

9. Can you give instances of abuses arising from the fee system? In what cases is this system best?

10. How are vacancies filled in the various offices?

11. How would you proceed to bring about the removal of a certain officer for non-performance of his duties?

12. In most States, the building and maintenance of roads is purely a local function. Is this work successfully performed? Should the States aid in making good roads? Forum, 26: 668–672; Highway Construction in Massachusetts, Pop. Sci. Mo., 51: 73–82.

13. Which excites most interest in your locality—local State, or National government? Is this as it should be?

14. Compare local government in the United States with the system of France. Wilson, The State, 214–223. Which do you prefer?

15. Make an outline of the three branches of government in your State on this plan:

Government.	Legislative.	Executive.	Judicial.
State			
County			
Town			

16. General accounts of State governments are found in Bryce, I, chapters 41, 42, 44, 45; Wilson, The State, 500–524.

CHAPTER IV

CITY GOVERNMENT

The crowding together of people in large cities is the result of new industrial conditions that have come about in America since the beginning of the nineteenth century. The immense increase in the use of machinery driven by steam and electric power has made possible the modern factory system. Manufacturing is no longer a home occupation; its great establishments gather about them the workmen whose numbers swell the city populations. Improvements in transportation methods and means of communication have developed commerce, and thus enhanced the importance of the city, which is the centre of commerce. The mere presence of large numbers of inhabitants within a limited area makes the conditions of human life in a city quite different from conditions in rural communities. In the city we have the poor, the ignorant, and the vicious thickly populating wards adjacent to others where wealth and culture predominate. Contamination of air, water, and food threatens health on every side. Business life in a city is remarkable for the energy with which it is conducted, the enormous sums involved in its transactions, and the employment of workmen in great numbers. It is said that "In the jostling throngs of the city a careless or vicious member of society has a hundredfold more opportunity to disturb the comfort and endanger the health and well-being of his fellows than in the coun-

Conditions of city life.

try." * Government must fit itself, both in the manner of its organization and in the execution of its functions, to these conditions. We see, then, the necessity of government on a large scale, conducted by numerous officers, and involving the raising and expenditure of vast sums of money. At the same time, we find the entrance of governmental regulation into the minute details of the citizen's life. We can hardly expect to have so much complicated political activity without correspondingly difficult problems.

City governments in the United States are organized upon the general plan of the division of powers among legislative, executive, and judicial branches. But the details of municipal organization and administration are so various that a general description is almost impossible. The framework of a city's government is prescribed in a special charter granted by the State legislature, or in a general State law. In the latter case some uniformity is secured among cities of the same size in the same State.

The charter.

The city legislature is regarded as the most important part of its government. It may be composed of one or of two houses. The members are uniformly elected, generally from wards; where there are two houses, the members of the upper one may be elected from the city at large. In size, city councils vary greatly.† The members are sometimes salaried, but more frequently they serve without pay.

The council.

The chief executive is the mayor, who is elected to office by the people. His term is most frequently one or two years, but the tendency is to make it longer. He sometimes presides over the meetings of the city

The mayor.

* Shaw, Municipal Government in Continental Europe, 7.

† Chicago, 70; Philadelphia, 170; St. Louis, 41; San Francisco, 13. Wilcox, The Study of City Government, 161.

council, and in most cities has the power to veto its ordinances. The executive and administrative powers of the mayor are much greater in some cities than in others. He is usually the head of the police department, and in this direction his authority is quite extensive.

The judiciary.

The judicial system of a city generally includes two kinds of courts: (1) the ordinary State courts (justice and district or superior courts); (2) special city or police courts. The jurisdiction of the latter is usually confined to minor cases, and the division of authority between the two kinds of courts is not always clear.

In a town or village government, the local board may have oversight at the same time of public health, charities, streets, sidewalks, and lighting. But as population grows more dense, these public interests increase in extent, complexity, and importance until it becomes necessary to make provision for the separate supervision of each one. We then have administrative departments, few in number in small cities, but very numerous in large ones.*

Administrative departments.

Departments under committees or boards.

It is a common practice in small cities to intrust to committees of the council the management of departments. Or it may be that a body of men known as a board or commission is elected or appointed for this purpose. Frequently such a commission or board will employ an overseer to superintend work that may be in progress under its direction. Now, this method of managing administrative departments has serious faults. Much of their work is executive in nature, and a committee composed of several members does not act with

* Boston has 33. The eighteen departments of Greater New York are, at present, finance, taxes and assessments, law, police, health, fire, buildings, highways, water supply, bridges, street-cleaning, sewers, public buildings, parks, docks and ferries, education, charities, and corrections.

sufficient promptness and unity of purpose. Furthermore, it is difficult to locate responsibility among the members of a committee; these are apt to shift the blame for bad management from one to another, and when responsibility rests upon several no one feels its burden seriously. Because responsibility is not definite and certain the temptation to yield to corrupt influences is strong. Members of such administrative bodies have sometimes entered into "deals" with contractors to furnish materials to the city at exorbitant prices.* When members of administrative boards are councilmen elected by popular vote, they are tempted to give "jobs" to influential politicians and to unnecessarily large numbers of workingmen. Incompetent employees and stuffed pay-rolls are the result.

Police departments.

Opportunities for the abuse of official power are especially frequent in the police departments of large cities. We have, for example, the appointment of men upon a police force for purely political reasons. The adoption, in some cities, of a competitive examination system in this department has resulted in higher physical standards and more intelligent officers. In several of the larger cities there has existed the systematic protection of law-breakers by the police, under a well-understood scale of prices. There is no department of city government which may become more serviceable to the people and reflect more credit upon the city, than the police department; and its power for evil, in the corruption of public morals, is equally great. Unfortunately, police departments are very often managed from the stand-

* Under the rule of the Tweed Ring, in New York City, a court-house which should have cost $250,000 was still unfinished after the expenditure of $8,000,000. For Tweed Ring see Encyclopedia of Social Reform; Bryce (last edition), II, chapter 88; Conkling, City Government in the United States; Andrews, History of the Last Quarter Century, I, 11-16; Scribner's Mag., 17: 274-276.

point of party politics, rather than upon the basis of merit and military discipline. In sharp contrast with these are the fire departments of American cities, which are remarkable for their efficiency and the purity of their management.

It is the shameless and wide-spread corruption originating in the administration of municipal departments that, more than any other single cause, accounts for the bad government of American cities. Many experiments have been tried for the improvement of this condition. As a device for preventing the entrance of political favoritism into the work of departmental boards, these are sometimes composed of members belonging to different political parties. They are called non-partisan or bi-partisan boards. Experience does not show, however, that this plan is successful in securing non-partisan control, as the members frequently agree upon a division of the "spoils" for political purposes. When it has seemed desirable to place a municipal department under a single officer, instead of under a board, the manner of appointing this officer becomes a new problem. If he be nominated by the mayor and confirmed by the council, neither of these authorities is willing to assume the responsibility for his conduct. Appointments for political reasons are common because each such appointment strengthens the political position of those who make it.

Non-partisan boards.

The single departmental head.

In recent years there has been a tendency toward placing administrative departments under the authority of the mayor alone, as a means of fixing responsibility more definitely. The mayor is given absolute power to appoint and to remove heads of departments.* At the

* He becomes in the city what the president is in the National government; whereas, otherwise there is a separation of executive and administrative departments, as in our State governments. Wilcox, 191-192.

same time the other powers of the mayor have been increased under the influence of popular distrust of city councils. The success of this plan—the single departmental head and the increased power of the mayor—depends largely upon the character of the men brought into office. If the mayor is a man of integrity and business capacity, he will endeavor to select suitable men as heads of departments. But often it is difficult to find these; for, except in the larger cities, administrative chiefs do not devote their entire time to official duties, and capable citizens are loath to take time from their private business for this work. It becomes apparent, therefore, that the mere concentration of authority in the mayor may not bring better results than its distribution among committees of the council. Reformers who had hoped to cure the evils of city government by this change in organization have been disappointed in the results that have so far been accomplished.

The mayor's powers increased.

The National Municipal League publish as "A Municipal Program," a model city charter, drawn up by a committee of its members who are recognized as authorities upon this subject. They recommend the organization of a city government upon the following plan:

1. A single-chambered council elected on the general-ticket plan, for terms of six years—one-third every two years.

2. A mayor elected for a term of two years; his salary to be fixed by the council. The mayor is to appoint all heads of departments (except controller). Subordinates are to be appointed under a civil service examination system administered by a commission of three members to be appointed by the mayor.

3. The controller is to be elected by the council and is head of the financial department of the city.

A model plan of organization.

We have now reviewed one of the great problems of municipal government. The solution of this, and of other problems that are soon to be noticed, depends not so much upon the adoption of a certain plan of organ-

ization as upon the creation of correct ideals of city government. Two questions may be asked: What is the primary purpose of municipal government? and, What should be required of those who administer it?

Primary functions of city government.

The least that may be expected of a city government is that it guard public health, enable citizens to live in security and comfort, and maintain an efficient educational system; and, also, that in doing these things public money be justly collected and honestly expended. If one follows out in detail this necessary work of city government, he will be impressed with the fact that these are matters of *business* almost exclusively, rather than matters of political policy. The council, being a deliberative body, should determine questions of policy; but no such questions are rightfully involved in the matters of which we have just spoken. Furthermore, it is true, especially in large cities, that many matters, such as sanitation, the water supply, and the construction of public works, are purely technical in their nature and should be in charge of experts.

City officers.

What, then, should be demanded of public officials? Evidently, some should be men of technical training. All should possess the same business capacity and zeal for the interests of their employers (the public) that are required in the sphere of private enterprise.

Now when there exist in a city right ideals in these fundamental matters, questions of organization become much simpler. It is not necessary, nor is it desirable, that the framework of municipal government should be the same in all cities of the country. The best arrangements will give evidence of their superiority in the course of time.

In the employment of subordinate officers, numerous cities* have adopted, within recent years, civil service

* Among them New York, Chicago, Milwaukee.

reform methods. Certain employees, whose duties are mainly routine or technical in character, are selected on the basis of examinations. These officers are retained during good behavior, instead of being turned out at every change in administration. The adoption and impartial administration of this system is a step in the right direction, for it means that business methods are to prevail, where once public office and public interests were subordinated to the demands of private greed. Civil service reform.

The administration of a city's finances tests, to the utmost, the quality of its government. The revenues and expenses of many cities exceed those of the States in which they are situated. Greater New York spends three times as much as New York State,* Boston four times as much as Massachusetts. The raising and expenditure of these immense sums of money, without the taint of fraud, is exceedingly difficult and unusual. We shall see in a later chapter how, by the undervaluation and concealment of property, many persons escape their just burdens of taxation. Such abuses are much more difficult to detect in cities than in rural communities, where business is conducted with less privacy. This is true, too, in the expenditure of public funds. The citizens generally do not understand, and do not watch carefully, the processes by which their money is applied to the objects of city government. This is because expenditures are made in such a great variety of ways, and because the machinery of city government is compli- City finances.

* See Coler, The Most Expensive City in the World. Pop. Sci. Mo., 57: 16-22. In 1899 the expenses of New York City were $20,000,000 more than those of London, $18,000,000 more than the expenses of Paris, and only $1,000,000 less than the combined expenses of Chicago, Boston, and Philadelphia. New York's budget for that year was $93,000,000. For 1901 it was $98,000,000. (The Nation, 71: 358.) Philadelphia's expenses in 1899 were $27.76 per capita; in 1800 they were but $0.97 per capita. See Pop. Sci. Mo., 58: 67.

cated. The officers who are responsible for the expenditure of money are frequently unknown to the tax-payer. These officers are more indifferent to the existence of abuses in connection with city finances, and the pressure of public opinion is much less direct than it is in rural communities.

The table below shows the number of cities in the United States of more than 8,000 population for each census year, and the percentage of the total population living in those cities.

	Number of cities.	Per cent. of total population.		Number of cities.	Per cent. of total population.
1790.....	6	3.35	1850	85	12.49
1800.....	6	3.97	1860	141	16.13
1810.....	11	4.93	1870	226	20.93
1820.....	13	4.93	1880	286	22.57
1830.....	26	6.72	1890	447	29.20
1840.....	44	8.52	1900 *.....	545	33.10

The following statistics give the per capita indebtedness of some representative American cities: Kansas City, Mo., $23.44; Milwaukee, $20.44; Philadelphia, $29.33; Providence, $35.05; St. Paul, $43.71; Utica, $8.07; Sioux City, $56.70; Toledo, $40.71; Chicago, $13.76; Indianapolis, $10.09. Bulletin of the Department of Labor No. 24, September, 1899.

Finances and growth of cities.

The question of finances is most serious in cities of rapid growth. For here the extension of streets and other public works offers opportunity for extravagance and dishonesty in the handling of public money. Moreover, in such cities experience furnishes but slight basis for legislation. There is always excuse, and often necessity, for the contraction of debts. Even when the proposition to issue bonds is submitted to a vote of the people, little business prudence is exhibited in the de-

* These statistics are given in Census Bulletin No. 70, July, 1901.

cision. Property-owners who are among the largest tax-payers favor the extension of public improvements as a method of advertising the city, and so insuring its rapid growth. As a result, they anticipate large profits in business and in real-estate transactions. But great dangers attend this policy whenever it is entered upon. The evils of over-taxation and the accumulation of municipal debts have become so serious that many State governments have set limits upon the power of cities to bond themselves. Some general supervision of municipal finances by State governments seems necessary.

City debts.

But the indiscriminate interference of State legislatures in municipal affairs has wrought far more evil than good. The granting and amendment of city charters by special acts of legislatures have in the past opened the way for the arbitrary regulation of city affairs by those who were not acquainted with local conditions.* Consequently in a majority of the States special legislation for cities is prohibited. Cities must be organized and their powers defined by general laws. The legislature may, however, adopt a classification of cities and enact a general law for each class. The purpose of the requirement for general legislation is defeated when such a classification of cities is adopted that but one city is included in a given class. "Home rule" for cities,

Legislative interference.

* New York City has suffered greatly from this evil. A recent writer says: "The city of New York is governed from the State capitol. Scores of laws are passed every year relating to matters of purely local interest and of minor importance. A bill for a park in a densely-populated portion of the city is introduced at Albany, and perhaps passed with little regard as to whether the city or the people of the locality desire its enactment. . . . This mass of legislation which flows into Albany from New York and from every other city, overburdens the State legislature. If every bill of local interest were thoroughly considered, nothing else could be accomplished, and the interests of the State would be neglected."—Municipal Affairs, IV, 452, Sept., 1900.

Home rule.

within the limits of general laws, seems a reasonable and necessary demand, in the face of the corrupt and oppressive legislation enacted at State capitals. Nevertheless, because of extremely bad conditions in the cities themselves, police boards have sometimes been appointed by governors. And in several other matters of administration, such as charities, health, and education, State supervision of city systems is a common practice.

Municipal functions.

We now approach the question, What is the proper sphere of municipal activity? This is a question upon which wide differences of opinion exist. There is common agreement that city governments should provide pavements, sewer systems, public parks, and schools. But the business of supplying water, lights, and street-car service has in the main been left to private or corporate enterprise. There is, however, some tendency toward municipal ownership. More than one-half the water-works plants in the United States are now owned by cities; a very much smaller proportion of the lighting plants and almost no street railway lines are municipal.

Natural monopolies.

It is generally recognized that because of the circumstances under which water, light, and transportation facilities are furnished, the industries that furnish these necessities tend to become monopolies.* Little or no competition between rival plants is possible. Consequently, there is danger that the rates and charges will be excessively high. In many cities the operation of these plants has yielded enormous profits to their owners. To conceal the real size of their profits, corporations sometimes "water" their stock, *i.e.*, the amount of stock is increased beyond the amount of money invested in the plant. The size of the dividends paid on the

*See Ely, Problems of To-day, chapters 18 and 19.

total stock now represents a much greater rate of profit on the actual capital of the corporation.

At one point the industries now under discussion are different from other enterprises: their operation involves the use of the city streets. Because the streets are public property, the right to construct and operate a plant is given in a franchise granted by the city council. A franchise is in the nature of a contract, the parties to which agree upon the obligations assumed by each. An individual or a corporation obtaining a franchise agrees to furnish a certain quality of service. If this is not done, the penalty may be the forfeiture of the franchise. Practically, however, it has been found very difficult to enforce strict adherence to the terms of agreement, by legal procedure. The rates to be charged for service may or may not be stated in the franchise. If they are not, the patrons have little protection from extortion. The justice of fixing rates in a franchise depends upon the length of time for which it is to operate. The growth of a city through a long term of years brings immense advantages to the industries that we have under discussion; for the greater population can be served at only slightly increased cost to the owners of the plants.

Franchises.

Such being the conditions under which public service plants have been operated by individuals and corporations, the question has been freely discussed, Should not the city itself own and control these industries, and furnish the service to the people at cost? Two alternatives are presented: public ownership and operation, or, strict control by city or State authorities.

Municipal ownership.

A strong objection to the first plan is the fact that party politics enters so extensively into municipal elections. Would not a municipal plant be operated for the political advantage of the party in power? Corrupt

Objections.

and inefficient employees would find places in such a system, while private ownership of an industry insures management by economical business methods. The advocates of municipal ownership reply that the amount of corruption in the management of a plant could not exceed that which now attends the granting of franchises by city councils. The right to use public property under favorable conditions is a valuable concession for which the grantees should be willing to pay. But the history of every large city records the granting of franchises without compensation. This may occur through the ignorance or indifference of aldermen; but in too many cases their votes have been bought and paid for in money, or political influence, or shares of stock. It would seem, then, that we have but a choice of evils; that the same state of public apathy which makes it possible for corporations to bribe aldermen and violate their franchises would make an honest and economical administration of a municipal plant very improbable. Admitting the deplorably low state of official capacity and public spirit in many cities, the advocates of municipal ownership urge that the assumption of municipal responsibilities is the best means of awakening the interest of the people in city affairs.

Those who do not accept municipal ownership as a desirable solution of the problem advocate various ways of controlling the operation of plants under private or corporate ownership. The following regulations* are recommended:

Methods of control.

1. No franchise should be granted for a longer term than twenty-one years.

2. The grantee should pay a fair price for the privileges secured; and, in addition, a percentage on gross receipts.

* Adapted from "A Municipal Program," 127.

3. At the end of the term, the franchise should revert to the public; the right of the city to acquire the plant, with or without compensation, being reserved.

4. The financial accounts of the grantee should be matters of public record, and should be open to examination by an officer of the city.

The problem of municipal ownership is one phase of a broader question, viz.: How far should municipal functions be extended? It being granted, for example, that the control of sanitary conditions is a public function in the interest of health, may not a city properly maintain public baths and laundries? Recreation is provided for by parks and boulevards; public playgrounds and gymnasiums may be justified on the grounds of both recreation and health. A school system ordinarily furnishes education in a limited field, and to children only. The public library is a means of education to those citizens who are beyond school age. Municipal art galleries and the furnishing of music at public expense are considered by many as equally legitimate undertakings. How far the city should encroach upon the field now given over to private enterprise is a question upon which men naturally differ, as radicals and conservatives. There is at present a strong tendency toward the exercise of new functions by city governments in many directions.

Extension of municipal functions.

Public baths are established in New York, Chicago, Boston, Buffalo, and Brookline (Mass.); municipal markets in Washington, Philadelphia, New York, Boston, and Baltimore. New York and Toledo have employment bureaus, Boston a municipal printing plant, and Syracuse a lodging-house.

Two fundamental conditions seem worthy of statement as explaining the generally unsuccessful working of city governments in the United States. 1. The prevalence of the party spirit in municipal politics. The

Party politics in city government.

National political parties are organized on the basis of issues in National politics, such as the tariff, the money question, and colonial expansion. There is nothing in the nature of the questions arising in city government to justify adherence to National party divisions in local politics. When this is done, voters become blinded to the real merits of issues and candidates; and city offices are regarded as legitimate rewards for party service.

Reform movements

When city and general elections are held at different times, there need be no confusion of National and local issues. Then independent movements may be organized and candidates nominated irrespective of parties. At various times, in our large cities, corrupt rings have been overthrown by the united action of citizens of all parties aroused for the suppression of some great evil. But such movements are too often but temporary; the evil abolished, men fall back into party lines. Constant pressure is exerted by party leaders to prevent the independent action of voters, because it is demoralizing to the strict discipline of party organization. On the other hand, the leaders of reform movements generally underestimate the importance of organization and political machinery in holding their followers permanently to the task they have undertaken. So the independent movement, though easily successful once or twice under the sting of municipal disgrace, often fails to accomplish lasting results.

Lack of civic spirit.

2. The second general condition that explains the failure of city governments is the lack of civic spirit. This is sometimes accounted for by the presence, in our cities, of a large foreign element.* Doubtless the crea-

* Percentages of foreign-born population are as follows: New York, 42¼; Chicago, 41; Philadelphia, 25⅝; Baltimore, nearly 16. See Wright, Practical Sociology, 118, 122; Wilcox, 118; Seventh Special Report United States Bureau of Labor.

tion of a unified civic spirit is rendered very difficult by this condition. But the final responsibility for bad government cannot be placed upon our citizens of foreign birth; nor even upon the ignorant and vicious classes. It may be fairly maintained that "there is not a city in the Union in which the honest, orderly, and industrious voters are not in a large majority."* Citizens need, above all, to feel a unity of interest in good government. They need to feel the necessity of co-operation in civic improvement, private opinions and selfish interests giving way to public welfare. The attainment of this ideal is a matter of slow growth; and the new and unsettled conditions of rapidly expanding cities retard this growth. In the end, good city government will be brought about only by constant and patient attention to civic duty on the part of citizens.

Foreign population.

Within recent years much progress has been made in this direction. Public interest has been aroused, and many reforms have been accomplished. The systematic study of municipal problems has been begun. Permanent organizations, such as the Civic Federation and the Municipal Voters' League of Chicago, the Municipal Reform League of Boston, the Municipal League of Philadelphia, the Good Government Clubs and City Vigilance League of New York, have been effectual in keeping the facts and needs of city government before the people. Numerous State leagues and the National Municipal League give opportunity for discussion of municipal problems, besides spreading information by their publications. The public schools have a part to perform in fostering the newly awakened civic spirit of the times. Preparation for the performance of the citizen's duties is becoming an important part of school work. The use of school buildings by

Municipal advance movement.

* Godkin, Problems of Democracy, 150.

the community as centres of social influence is a tendency working in the same direction. Thus we see that the forces are at work which will ultimately solve the problems of city government.

The government of Chicago.

The city of Chicago * is divided into thirty-five wards; from each, two members are elected to the single-chambered city council. Work in the council is conducted mainly by committees, which are elected by the council itself. These committees determine the city's policy upon the important subjects of finances, licenses, public works, and franchises. The mayor is elected for a term of two years. He presides in the council, but has little power there, except as chairman, casting a tie vote, and in the exercise of his veto power. The mayor appoints all heads of departments and other officers that are not elected. A Civil Service Law passed in 1895 by the State legislature requires that subordinate officers be selected under an examination system; this is conducted by a commission appointed by the mayor.

At the head of each administrative department is a single responsible officer. There are the departments of Public Works (including the bureaus of street-cleaning, engineering, streets, water supply, and telegraphs), Police, Fire, Health, Electricity, and Schools. The comptroller is the head of the Finance Department, with extensive powers over all fiscal matters, including contracts and bonds. His signature is necessary on warrants authorizing expenditures. The city treasurer is a clerical officer, without such discretionary powers as those exercised by the comptroller

The park systems of Chicago are not under the control of the city government. Park Boards are appointed, constituting distinct administrative departments. Moreover, "the park areas are tax-gathering and tax-expending areas for park purposes." The Chicago Drainage District is also a separate administrative area, with full powers of taxation and expenditure. It naturally includes more territory than the city alone. The Board controlling this district is composed of nine elected members.

Similar industrial changes have caused the same rapid growth in European as in American cities. Between 1870 and 1890, Berlin

* Based upon Sparling, Municipal History and Present Organization of the City of Chicago. Bulletin of the University of Wisconsin, No. 23.

grew faster than New York, Hamburg faster than Boston, Munich faster than St. Louis. The following table shows populations for 1900, with percentages of increase since 1890: Foreign cities.

Greater New York.	3,437,202	31	Berlin.....	1,884,345	19
Chicago.....	1,698,575	108	Hamburg....	704,669	119
Philadelphia.....	1,293,697	24	Munich.....	498,503	46
St. Louis.....	575,238	28	Leipzig.....	455,120	54
Cleveland.....	381,768	63	Breslau.....	422,415	26
Buffalo	352,219	65	Dresden.....	395,349	43
Cincinnati.....	325,902	16	Cologne.....	370,685	31
Pittsburg.....	321,616	53	Frankfort....	287,813	60
New Orleans.....	287,104	12	Nuremberg..	260,743	83
Milwaukee	285,315	77	Hanover	234,986	44

In European cities the councils are generally larger than with us, and their members are elected for longer terms. Voters must have property qualifications in most European countries, though not in France. In Italy an educational qualification is required. In German cities, no salaries are paid to councillors. The position is regarded as one of honor, and members of councils are of higher character than in American cities.

Mayors in England and France are elected by city councils; in several other countries they are appointed by the national government. The German Burgomaster is a specialist in municipal government, with a body of trained experts as his assistants. He is paid a good salary, and is frequently transferred from one city to another, as the heads of business corporations are in this country.

Party politics plays less part in the affairs of European cities than in the United States; they have, consequently, less corruption among city officials. The idea of a trained and permanent civil service is universal. Greater public interest and higher ideals of city government may be found in European cities.

In this country the State is the source of all municipal powers. The city may exercise only such functions as are delegated to it. In European countries the reverse is true. "The municipal corporation may do anything where power has not been conferred specifically upon some other authority, and is subjected to a central control only where the law specifically and expressly provides for such a control." * European cities have extended their functions in many directions that are unknown in most American cities.

* Goodnow, Municipal Problems, 252–254; Wilcox, 170–173.

There, water, lighting, and street-railway plants are much more commonly owned or more strictly controlled than in our cities. Municipal slaughter-houses (abbatoirs) are common in German and Austrian cities; pawn-shops and savings banks, in French and German cities. Municipal lodging-houses exist in Glasgow, Berlin, and Paris; baths in Birmingham, Sheffield, Liverpool, and many other cities. Municipal concerts are given in Glasgow and Newcastle-on-Tyne, and the cities of Odessa, Budapest, and Paris support theatres. Amsterdam and other foreign cities have municipal telephone systems.

Supplementary Questions and References.

Make a study of your (or a neighboring) city on the following points:

1. Economic reasons for its location and growth.

2. Time and circumstances of its incorporation. The original limits. Reasons for subsequent enlargement of the city.

3. The city legislature — name, number of members. How are they elected? For what terms? Are they paid? Do you think changes would be desirable in these respects? Can you make a general statement concerning the occupations and qualifications of members?

4. The executive — title — term — salary. What are his powers of appointment? Has he the veto power? Should his powers be increased?

5. Judiciary—courts—officers—jurisdiction.

6. How many administrative departments are there? Are they under the control of committees, boards, or single heads? What is the relation of each department to the mayor? to the council? Outline the work of each department. Does the present arrangement work successfully?

7. Obtain a statement of the city's finances, showing receipts and expenditures. Is there a bonded debt? How is it managed? Is there a sinking fund?

8. What is the relation existing between this city and the State government? Would more "home rule" be desirable, or less?

9. How are the water, lighting, and street-car plants managed? Would you change the system? Do you favor the extension of the city's functions in other directions?

10. What kinds of street pavement are used? What is the best kind? How much does it cost?

11. What method of garbage disposal is in use? How are the streets cleaned? Are these methods effectual? Can students in the public schools help in keeping the city clean? Can they do anything toward beautifying the city?

12. What is the organization of the police department? Can you recommend improvements? If an officer fails to enforce an ordinance, what course would you take to secure its enforcement?

13. Does your city have to deal with problems of the slums and tenement houses? Is there a large foreign-born element? Would you recommend any limitation of the suffrage?

14. Are independent or reform movements successful in this city?

15. What are the excellent features of the city's government? What are its faults? What reasons can you assign for its excellencies and its failures?

16. Organize your class as a city council and pass ordinances that you think beneficial.

The most useful books on City Government are the following:

Bryce, American Commonwealth, I, chapters 50–52; II, chapter 88 (third edition, chapters 88, 89); Conkling, City Government in the United States; Wilcox, The Study of City Government; Devlin, Municipal Reform in the United States; Tolman, Municipal Reform Movements; Bliss, Encyclopedia of Social Reform; A Municipal Program; Riis, How the Other Half Lives.

A valuable magazine devoted to problems of city life and government is Municipal Affairs.

CITY GOVERNMENT IN GENERAL.—N. Am. Rev., 165: 343–349; 150:631–637; 163:758–760; 172:751–763; Arena, 17: 529–537; 847–856; 989–995; Rev. of R's, 15: 473;

Forum, 10 : 357–372 ; 21 : 53–64 ; 27 : 469–481 ; Century Mag., 40 : 798–799 ; 42 : 730–736 ; 48 : 793–794 ; Atl. Mo., 80 : 620–634 ; Harper's Mag., 69 : 779–787 ; 84 : 709–721 ; Scribner's Mag., 20 : 418–428 ; Pop. Sci. Mo., 58 : 60–68.

GROWTH OF CITIES.—Forum, 10 : 472–477 ; 19 : 737–745 ; Century, 55 : 79–80.

CIVIL SERVICE REFORM IN CITIES.—Scribner's Mag., 18 : 238–247 ; N. Am. Rev., 166 : 196–206.

POLITICS AND ELECTIONS.—Century, 48 : 793–794 ; 312–314 ; Atl. Mo., 52 : 323–329 ; Nation, 58 : 136, 422.

FOREIGN CITIES.—England, Rev. of R's, 10 : 70–71 ; 5 : 282–308 ; Century, 41 : 132–147 ; 53 : 71–89 ; N. Am. Rev., 151 : 615–629 ; Germany, Rev. of R's, 10 : 71–74 ; Century, 48 : 296–305 ; 380–388 ; Forum, 23 : 686–697 ; Toronto, Rev. of R's, 10 : 165–173 ; Outlook, 58 : 351–357 ; 72 : 633–635.

FRANCHISES AND MUNICIPAL OWNERSHIP.—Outlook, 58 : 920–924 ; Nation, 56 : 449 ; 58 : 285 ; 65 : 26 ; 67 : 460 ; Forum, 21 : 53–64 ; Arena, 13 : 118–130 ; 14 : 86–109 ; 439–463 ; 15 : 95–111 ; 17 : 529–537 ; 19 : 43–53 ; 20 : 545–558 ; 25: 198–209 ; N. Eng. Mag., 13 : 244–252 ; Boston, Atl. Mo., 81 : 311–322 ; N. Eng. Mag., 14 : 389–409 ; Rev. of R's, 9 : 327–448 ; Outlook, 68 : 111–114 ; Cosmop., 30 : 430–434 ; 557–560 ; N. Am. Rev., 172 : 445–455 ; Century, 60 : 311–312.

Water, gas, and electric-light plants under private and municipal ownership. Fourteenth Annual Report of the Commissioner of Labor, 1899.

HOME RULE FOR CITIES.—Century, 48 : 790–791 ; Rev. of R's, 9 : 682–684.

SANITARY CONDITIONS.—Forum, 20 : 747–760 ; New York, Scribner's Mag., 22 : 64–76 ; 179–190 ; Harper's Mag., 71 : 577–584 ; N. Am. Rev., 161 : 49–56 ; Outlook, 62 : 416 ; 66 : 126–128.

Public baths in Europe. Bulletin of the Department of Labor, No. 11, July, 1897 (illustrated).

STREETS AND PAVING.—Century, 24 : 894–910 ; Nation, 49 : 124–125 ; 162–163 ; Pop. Sci. Mo., 56 : 524–539.

THE POOR IN CITIES.—Arena, 17 : 1039–1051 ; N. Am. Rev., 161 : 685–692 ; Atl. Mo., 83 : 163–178 ; Riis, Battle with the Slums, 83 : 626–634 ; Riis, Tenements, 83 : 760–

776; New York Tenement House Evil, Scribner's Mag., 16 : 108–117; Century, 53 : 247–252; 45: 314–316; Forum, 19 : 495–500; Rev. of R's, 6 : 720–721; Scribner's Mag., 11 : 697–721; 531–556; 13 : 357–372; 14 : 121–128; 17 : 102–114.

The slums of great cities. Seventh Special Report of the Commissioner of Labor, 1894.

REFORM OF CITY GOVERNMENTS.—Century, 47 : 630–632; 311–312; 44 : 474–475; 46 : 155–156; 49 : 155–157; 790–791; 54 : 794–796; Rev. of R's, Boston, 15 : 267–268; Philadelphia, 10 : 427–428; Municipal Leagues, Rev. of R's. 11 : 415–427; Chicago, 21 : 736–737; N. Am. Rev., 151 : 422–431; 153 : 580–595; Forum, 23 : 531–538; 19 : 610–614; San Francisco, 26 : 567–577; Arena, 16 : 728–735; 17 : 707–710; Outlook, 58 : 963–965; Harper's Mag., 99 : 641–646; London, Scribner's Mag., 11 : 401–424; Chicago, Atl. Mo., 85 : 834–839; Nation, 66 : 297; 58 : 40, 136.

GREATER NEW YORK.—Atl. Mo., 79 : 733–748; Scribner's Mag., 20 : 418–428; Rev. of R's, 15 : 523–524; N. Am. Rev., 168 : 90–100; Chicago, Rev. of R's, 15 : 589–591; San Francisco, Rev. of R's, 19 : 569–575.

MUNICIPAL ART.—Harper's Mag., 100 : 655–666.

CITY SCHOOL SYSTEMS.—Rev. of R's, 20 : 94–95; Forum, 27 : 385–397.

CHAPTER V

ELECTIONS AND PARTY GOVERNMENT

In the local and State governments of our country the number of officers elected is very large and the terms of office are short; hence elections are of frequent occurrence. Town, village, and city elections generally occur in the spring of the year, while State and county officers are elected at the same time with members of Congress, on the Tuesday after the first Monday of November in the even-numbered years. There are, however, some exceptions to these general rules.

Times of elections.

Since suffrage qualifications are fixed by the different States,* there are many variations in details, though general agreement prevails upon the fundamental requirements. 1. The age at which a person may vote is uniformly twenty-one years. 2. Manhood suffrage is usual. Very few States have granted full suffrage to women—at present Colorado, Wyoming, Utah, and Idaho. In most States of the Union women vote at school elections. 3. It is usual to require a residence of six months or one year in the State where a person wishes to vote; also, a brief term of residence in the election district. 4. Full United States citizenship is required in a majority of the States. In the others † a

Suffrage qualifications.

* The National government controls suffrage in the States through Amendment XV of the United States Constitution; also, indirectly through Article I, section 2, clause 1. Section 2 of Amendment XIV might, if it were enforced, act as a restraint upon the States in their restrictions of the suffrage. See pp. 142–143.

† Alabama, Arkansas, Colorado, Indiana, Kansas, Michigan, Missouri, Nebraska, Oregon, South Dakota, Texas, Wisconsin.

foreigner who has declared his intention to become a citizen is given the right to vote.

The right of suffrage is withheld from certain classes of citizens, such as the insane and the feeble-minded, and those who have been convicted of certain crimes. One hundred years ago there were property qualifications for voters in every State in the Union. The democratic movement of the first third of the nineteenth century swept these laws away. At present the payment of a tax is a requirement in a few States.* In Connecticut, Massachusetts, Wyoming, Maine, Delaware, California, and several of the Southern States, an educational qualification has been fixed.†

Within the last two decades great changes have taken place in the manner of conducting elections in the United States, as the result of efforts to check widespread election abuses. Among these abuses was "repeating;" that is, voters went from one polling place to another, voting at each. It was comparatively easy to commit this fraud in large cities; the enactment of registration laws has materially checked this evil. At a stated time before an election the voter must have his name and residence recorded with the election officials. The registry lists are published so that false registration may be detected. Such laws exist in a majority of the States, though their action is in some cases confined to the larger cities, and here the laws are sometimes not strictly enforced. As each ballot is cast the voter's name is checked in the registry list. Voters who have failed to register may "swear in" their votes; that is, take oath that they are qualified electors. This opens the way to fraud and is consequently prohibited in the large cities. In the main, it is recognized that

Registration.

* Georgia, Pennsylvania, Tennessee, North and South Carolina.

† See pp. 142–143.

registration must be a feature of every good election system.

Many other forms of election abuses were checked by the adoption of the Australian ballot system, which now exists in all but one or two of the States. Under former election methods, each political party printed its own list of candidates, or the tickets might be printed by individuals. A variety of frauds might then be committed. A number of tissue-paper ballots were sometimes folded together and cast as one ballot. Candidates could have ballots printed like those of the rival party with the exception of one or two names. Or, slips of gummed paper (called "pasters") with the name of one candidate, could be fastened upon the ballots. In these and similar ways ignorant and careless voters were often deceived. Hence we now have the *official ballot*, printed by the government, on which the names of all the candidates must appear. Another essential feature of the Australian ballot system is secrecy. This has effectually checked bribery at the polls, for the buyer of votes can no longer be certain how any voter casts his ballot. The ballots must be obtained from election officials within the election booth; screened shelves are provided to which the voter must immediately take his ballot and mark it. He must then fold and cast the ballot without communication with any but election officials. "Electioneering" is prohibited within or near a booth.

The Australian ballot system.

Two forms of the official ballot are used, as illustrated below.

1. The original Australian ballot form.

For Governor.	Party.
A. B.	Democratic.
C. D.	Prohibition.
E. F.	Republican.

For Lieutenant-Governor.	Party.
G. H.	Prohibition.
I. J.	Republican.
K. L.	Democratic.
For Assemblyman.	
M. N.	Republican.
O. P.	Democratic.
Q. R.	Prohibition.

2. The modified American form.

State Officers.	Democratic.	Prohibition.	Republican.	Individual Nominations.
Governor	A. B.	C. D.	E. F.	
Lieutenant-Governor	I. J.	K. L.	M. N.	
Member of Assembly	O. P.	Q. R.	S. T.	

More intelligence and care are required in the use of the first form; the second form favors the voting of straight tickets.

The success of any ballot system in preventing frauds and encouraging independent voting depends as much upon the integrity of election officials as upon the election machinery provided by law. It is customary to have the inspectors and clerks of election selected from the two leading parties. Challengers are allowed to question the right of any man to vote.

The canvass.

After the polls are closed, the counting of votes, or official canvass, takes place. Returns from the election precincts are sent to the city, county, and district canvassing boards to be tabulated. The results are then sent to the State canvassing board. Each board has authority to decide which candidates are elected within its jurisdiction. Certificates of election are issued to

successful candidates, and thus the process of election is completed.

The nomination system.

An election is a means by which the popular will is expressed. The execution of the judgment thus made known by the voters is intrusted to the successful candidates for office. But the election is only the final step by which men reach office; first comes the selection of candidates by the political parties. The process of making nominations is no less important than the election itself.

Party committees.

Party nominations are generally brought about by a system of caucuses and conventions. The management of these meetings, and of party interests in general, is in the hands of a series of committees elected for the various governmental divisions. Each party has a local committee in every town, village, and ward. There are also, for each party, city committees for the management of party machinery in cities; county committees; a State committee, which controls campaigns and determines party policy in the State; and, finally, a National committee for the management of each National party organization. Besides these, there may be committees for each State Senate and Assembly district, and for each Congressional district. All except the local committees are appointed in the party conventions.*

The caucus or primary.

A caucus, or primary, is a meeting at which all the voters of a party in a town, village, or ward may assemble. Before the election of town, village, and ward officers, caucuses will nominate candidates directly. For all but these local elections (*i.e.*, for the nomination of county, State, and National officers) a second step is necessary; the caucuses choose delegates to conventions where these

* This account represents the party organizations as complete; they are not so in many parts of the country.

nominations are made. Thus, before a general election, we have county conventions for the nomination of county officers; various district conventions, where candidates are nominated to run for the State legislature and for the National House of Representatives; State conventions, composed of delegates chosen at county or district conventions; and, finally, in years of presidential elections, there are still other series of caucuses and conventions, culminating in the great National conventions, where presidential nominees are selected.* It is now evident that party conventions are representative bodies; that they select party committees and candidates for office, who in turn are supposed to carry out the wishes of the conventions. It is customary, also, for State and National conventions to formulate *platforms;* these contain statements of party doctrine and pledges concerning party policies. The exact method of conducting all this party machinery is not prescribed by law, but has become established through custom.

Political conventions.

Let us now examine our nominating system more closely, with a view to discovering its significance. Several features are noticeable: (1) the thorough organization of the party machinery; (2) its complexity; (3) its representative character. The only place where every member of a party may act is in the caucus. Elsewhere, committees and delegates represent individuals. Because of these characteristics, much time, labor, and skill are necessary on the part of those who direct successfully the various operations leading up to nominations. Citizens who are fully occupied with private affairs are, therefore, loath to enter the political field with a view to exerting influence and becoming leaders in these matters. As a result, the greatest part of this work of political organization and management must

The management of political parties.

* See p. 252 ff.

be performed by candidates for office and government officials. Generally speaking, these are the men who make political life an occupation, either temporarily or permanently. They constitute, it is needless to say, a small minority of the total number of voters. Yet, because of the complex organization and representative nature of our political party machinery, the few who engage in its management frequently control it completely, while the mass of voters accept the results of their labors and vote at elections for party candidates in the selection of whom they have taken little or no part. Furthermore, a few party managers may even bring about the nomination of candidates who are distasteful to the majority of voters in a party, so that at the election the latter must decide between two candidates for office, neither of whom meets their approval. Let us see how this is possible.

Control by a few

Usually much less than one-half, and in many places less than one-tenth of the voters attend the primaries. This is accounted for by the indifference of some, the ignorance of others, and the inability of still others to understand our complex nominating system. Even if a majority of the voters attend a caucus, the smaller part of these, if they are well organized under a leader, will out-vote the rest, whose votes are scattered among a number of rivals. By skilful tactics, then, one who aspires to a nomination may secure a majority of the delegates to the convention, even though he is not the choice of his party. In conventions, too, the conditions are favorable for the exercise of influence by party leaders. If few voters have attended the caucuses, or if the delegates have not been instructed how to act, it is hardly to be expected that the will of those who are silent or indifferent should be discovered and obeyed rather than the wishes of those who take much pains to

Actual party government.

bring about the results that they desire. In the case of conventions that elect delegates to still other conventions, it is evident that the voters, who should constitute the real source of political power, are still less likely to express their will or to be accurately represented. We now see how, because of the amount and complexity of its machinery, a party may come under the control of a comparatively few men whose methods may or may not receive the approval of a majority of the voters of that party. These leaders gather about them subordinates in various localities, and these in turn have their adherents who can be depended upon to work for the success of their chiefs. A thoroughly organized body of political workers who dominate a party in this way is called a "machine." Its operations are generally directed by a "ring" or a "boss."

Now the motives that inspire the machine and the methods it employs may be either good or bad. Organization, leadership, and machinery are always necessary to secure harmonious action in bodies of men. But the opportunities for corruption in our party system are many; so that the politicians who will make freest use of corrupt means to gain their ends are very apt to succeed, when those who are less unscrupulous will fail. Consequently, the phrase "machine politics" is generally understood as referring to political methods that have little to recommend them, if they are not thoroughly bad.

Machine politics.

The machine may get control of caucuses by making lists of the voters qualified to take part in them, excluding, on some pretext, all who oppose its own plans; or, by the distribution of favors, "treats," and the promises of "jobs," the machine gathers adherents sufficient in number to outvote the citizens who are not so thoroughly organized. In conventions, promises of appoint-

"Wire-pulling."

ments to office in exchange for votes; combinations of politicians to help each other regardless of merit or public interests; even the direct use of money in buying votes—these are methods not infrequently used to secure the control of nominations.

Reform of party politics.

How to cure the evils we have described is one of the greatest political problems of the day. Some progress has been made toward reform by the enactment of *primary reform laws.* By these laws the entire process of conducting caucuses is put under the control of the local government, just as elections are. The secret ballot is required. Regularity and publicity of proceedings are thus secured, and the control of caucuses by a few men is made more difficult. As another measure of reform, the *direct nomination* plan has been proposed.* Under it all nominating conventions are abolished. Names of candidates (as for the office of governor, congressman, or sheriff) are proposed by petitions signed by voters. On primary election day each voter casts his ballot directly for the man whom he wishes to see the candidate of his party. The person receiving the largest number of votes is declared the nominee of his party. This method is a part of the original Australian election system.

The corrupt expenditure of money in political campaigns has been met in many States, more or less successfully, by *corrupt practices acts.* Heavy penalties are provided for such offences, and candidates are required to make sworn statements of all their campaign expenditures.

Party action is a vital part of our government. The

* Direct nominations are the rule in several Southern States where there is practically but one political party; in some New England cities; in certain counties of Pennsylvania, Iowa, and Indiana; and this has recently (1901) become the legal system of Minnesota.

citizen may, if he will, participate in the conduct of government more frequently and more effectively through his party than in any other way. For parties not only select candidates and formulate policies; they conduct educational work in campaigns, they detect frauds committed by their opponents, determine appointments to positions in government service, and control the action of legislators and executive officials. Good government depends in no small measure upon the proper exercise of these functions. The duty of voting at elections is, therefore, a small part of the citizen's whole duty. When a party falls into the control of a few unscrupulous men, not only they, but also the respectable citizens who refuse to participate in party activities, should be held responsible. The citizen's duty.

This does not mean that the citizen should follow his party when he thinks it wrong, or when he cannot conscientiously vote for its candidates. He can sometimes best serve his party by turning against it, for the fear of such independent action will sometimes restrain party leaders when nothing else will. In this way many reforms have been brought about, for naturally enough, party leaders are loath to reform abuses that tend to perpetuate their power. Independent action in politics.

Supplementary Questions and References.

1. In your State—
 What are the times fixed for elections?
 The qualifications of voters?
 The legal regulations governing registration — the ballot—provisions for secrecy—election officers—the official canvass?
2. For the history of the Australian ballot system see Johnson's Encyclopedia, Ballot Reform; Bliss, Encyclopedia of Social Reform.

3. Why are women given the right to vote in school, municipal, or financial matters only, in some States?

4. Should women be given the full right of suffrage? Century Mag., 48 : 469–470; 605–613; 613–623; Outlook, 56 : 405–408; 57: 789, 964; 64 : 697–698.

5. Do you believe in a property qualification for voters? An educational qualification?

6. Should aliens who have declared their intention to become citizens be given the franchise?

7. The laws of a number of States permit the use of voting machines. See Forum, 28: 90–93.

8. Follow in detail the steps leading to a general election in your State :

(1) Notices of election—when and by whom issued.
(2) Action of party committees.
(3) Method of nomination of county and State officers and Representatives in Congress.
(4) Party platforms.
(5) Conduct of the campaign—raising and expenditure of money—distribution of literature—political speeches, etc.

9. How many caucuses and conventions were held in your election district during the last general election year? How many candidates were nominated?

10. Why are the terms "politician" and "machine" so frequently used in a bad sense?

11. A very full discussion of our party system is that found in Bryce, Vol. II, chapters 53–75. See also Bliss, Encyclopedia of Social Reform; The Business Man in Politics, N. Am. Rev., 151 : 576–581; Greenhalge, Practical Politics, N. Am. Rev., 162 : 154–159; Money in Politics and Elections, Century Mag., 44 : 940–952; 952–953; On Voting Straight, Century Mag., 55 : 475–476; The Boss System, Forum, 23 : 396–408; Harper's Mag., 97 : 182–190.

12. Primary reform. Remsen, Primary Elections; Outlook, 56 : 9–11; 57 : 950–952; 58 : 176–177, etc.; Nation, 65 : 431–432; 66 : 161–162; Atlantic Mo., 79 : 450–467; Arena, 17 : 1013–1023; 19 : 729–739; Rev. of R's, 16 :

322–324; 17 : 472–474; 583–589; Forum, 25 : 99–108; N. Am. Rev., 164 : 92–105; The Minnesota Experiment, Outlook, 62 : 150–151.

13. Comparisons of English and American party systems. N. Am. Rev., 156 : 105–118; Harper's Mag., 101 : 329–341.

14. The duties of citizenship. Godkin, Duty of Educated Men in a Democracy, Forum, 17 : 39–51; Roosevelt, What Americanism Means, Forum, 17 : 196–206; The Manly Virtues and Practical Politics, Forum, 17: 551–557; True American Ideals, Forum, 18 : 743–750; Civic Duty, Nation, 57 : 4–5.

CHAPTER VI

PUBLIC FINANCES

The necessity for taxation.

No operations of government, even the most fundamental and necessary, can be carried on without the expenditure of money. To meet this expenditure, those who are benefited by the protection and security that government affords must be taxed. Moreover, as governmental functions are extended to include the furnishing of conveniences and the maintenance of institutions that instruct and elevate the people, increased outlays of money become necessary, and, consequently, more extensive taxation. The importance of this subject is apparent, for great possibilities for both good and evil reside in systems of taxation and methods of expending public money.

Valuation of property.

Many different forms of taxation are employed, but the tax on property is found in every State of the Union. As the first step in determining what amount of taxes a property-owner shall pay, a *valuation* is placed upon his property by local or county officers called assessors. The assessment roll contains the name of each tax-payer, with a list of his property and its value. State laws usually require that this be full cash, or actual, value; but undervaluation is the rule rather than the exception. Since the amount of an individual's taxes depends upon the assessed value of his property, it is natural that property-owners should frequently think that their assessments are too high. They are accordingly allowed to appeal to a local board, which has the power to review

and correct assessment rolls by lowering or raising valuations. The board may also add to the list of property recorded on the roll, and may strike out property that is illegally assessed.

Now, just as there is difficulty in fixing satisfactorily the valuation of each individual's property, so a similar difficulty is experienced in adjusting valuations among the villages, towns, and cities. For the county and State taxes that each local unit must pay depend upon its total valuation. Each assessor is tempted to keep valuations low in order that his local unit may not be heavily taxed. To remedy this difficulty, a county board of equalization is provided, which has the power to raise and lower valuations, as shown in the assessment rolls. In some States this board may change individual valuations; in others simply the total valuation of each local unit. Again, we have a like difficulty in the next step of the process. The amount of taxes which the property-owners of a county will be called upon to raise for State purposes will depend upon the valuation of the property in the county. Consequently county authorities are apt to think it incumbent upon them to see that their valuations are low, so that their tax will be low. To correct this tendency toward undervaluation, State boards of equalization have been established in many States, with power to review the county assessments and to place them on a basis of relative equality.

Equalization of valuations.

So far we have been considering the method of fixing the value of property for taxing purposes. The actual amount of tax to be paid into the public treasury is determined in the following manner: At each meeting of the State legislature appropriations for various State purposes are made. From this, the amount of money to be raised, or the rate of taxation to be levied, may be easily calculated. The total amount to be raisod is ap-

Determination of the rate.

portioned among the counties in proportion to their valuations. In each county the authorities add to their quota of the State taxes the amount to be raised for county purposes and apportion the total among the local units. Each local legislative board determines the local tax levy for the ensuing year, and to this is added the tax that must be raised for county and State purposes. The rate of taxation may then be computed by dividing the total amount to be raised in a collection district by the total valuation of property in that district.

Collection of taxes.

The property-owner pays taxes but once each year, and he seldom knows what share of his payment goes toward the support of each government that taxes him. In some States the payment is made to the local treasurer, and in others to the county treasurer or collector. When local treasurers collect taxes they deduct the amount raised for local purposes before sending the balance to the county treasurer. After the amount levied for county purposes has been kept out, the county treasurer sends the balance to the State treasurer, and thus the process is completed. The failure to pay taxes renders property *delinquent*. It may then be seized and sold. After taking the amount due for taxes and expenses, the remainder, if any, is returned to the original owner.

Exemptions.

Some descriptions of property are quite uniformly exempted from taxation; such are, all property belonging to Federal, State, or local governments, and the property of educational, religious, scientific, and benevolent associations. In some States, also, a certain amount of the personal property, such as the household furniture, of each property-owner is exempt from taxation.

Undervaluation.

From the foregoing account of the processes of valuation and equalization, it is evident that the working of our general property-tax system is far from perfect. The practice of undervaluing property in the assessment rolls is almost universal and is productive of great in-

justice. In any single locality the *uniform* undervaluation of property works no injury, so far as the raising of local taxes is concerned; this simply raises the rate. In many communities there is a uniform and well understood ratio between the real and the assessed value. But when the degree of undervaluation differs materially in the communities of the same county or in the counties of a State, inequality of taxation is the result. County and State boards of equalization are not, as a rule, successful in correcting the evils occasioned in this way.

The following statistics are illustrative of conditions that exist throughout the country. In Minnesota, farms that sold for less than $1,000 were assessed at 50 or 60 per cent. of actual selling prices; while farms worth between $3,000 and $5,000 were assessed at 36 per cent. of their selling prices. Of thirty Chicago residences, ranging in value from $20,000 to $1,300,000, the highest assessment was 12.23 per cent. of true value. The average was 7.78 per cent. The residence of highest value was assessed at 5.54 per cent. of true value. In New York State, 107 estates recorded on court records as worth $215,000,000 (not including the value of non-taxable securities) were valued on assessment rolls at $3,500,000.

Real estate and personal property.

Another evil, even greater than the one just stated, results from the fact that personal property quite generally escapes taxation. Property is divided into two classes: real estate, which includes land and the fixtures thereon, as buildings and improvements; and personal, which includes all other property. Under the head personal property are placed furniture, clothing, jewelry, merchandise, farm products, live-stock, machinery, books and pictures, money, stocks, bonds, mortgages, notes, and credits. Now it is apparent that many of these things have values that an assessor cannot easily ascertain by inspection; other articles mentioned in the list are easily concealed. As a consequence, the appearance

of personal property on the assessment rolls, and its assessment at values that are anywhere near actual value, depend upon the honesty of property-owners. In most States, assessors may, and in some States they must, take a sworn statement from each property-owner as to the actual value of his property; but this does not effectively correct the evil. Those who make honest returns are apt to be of the poorer class, besides those who have legal control of property belonging to orphans, widows, and dependent persons, for the value of these estates is a matter of probate court record. At this point, then, the general property tax is the source of gross injustice and fraud.

Personal property escapes taxation.

Two propositions are agreed upon by competent authorities. 1. The value of personal property has immensely increased within recent years. 2. The personal property is in most States equal in value to the real estate. Yet the assessed value of personal property decreased in Ohio between 1883 and 1885; in Illinois between 1873 and 1893; in New York between 1875 and 1885; and in the United States as a whole between 1860 and 1880. In New York the assessed value of personal property was, within recent years, 12 per cent. that of real estate; in New Jersey, 17 per cent.; in Illinois, 17 per cent.; in Indiana, 26 per cent.; in Massachusetts, 22 per cent.; and in Pennsylvania, 20 per cent. According to the census of 1890, real estate, throughout the country, was assessed at one-half, and personal property at one-fourth, actual value.

Problems of taxation.

Even an honest attempt to administer the general property tax will involve many vexatious problems. If real estate is taxed, should a mortgage on it be taxed also? Should the debts of a tax-payer be deducted from his credits, if the latter are taxed? If the property of a corporation is taxed, should the stock-holders be taxed on their respective holdings of stock? Similarly, troublesome questions arise concerning the place where property shall be assessed. Too often, unscientific methods, in these and other matters, result in

double taxation—the imposition of a tax on the same property twice.

In spite of the serious defects of the property tax, no single, practical substitute has been discovered and put into operation. Public interest has been aroused upon this subject, however, and methods of taxation intended to correct the inequalities of the property tax have been adopted in many States. There is a growing practice of using special methods for the taxation of corporations. In a few States, a general corporation tax is imposed which is a fixed rate on the capital stock, or the earnings, of all corporations doing business in those States. Again, the rules of taxation applied to different classes of corporations may vary in the same State. The taxation of railroad property by local authorities has been quite generally abandoned, on account of the inequalities of assessment under this plan. In some States a special board values all railroad property in the State; in others this property is not taxed, but instead a tax is laid on the gross earnings, mileage, or capital stock of these corporations. Telegraph, telephone, express, and insurance companies are also subject to special taxes based on gross receipts, mileage of wires, etc. Franchise taxes are becoming increasingly common in the States. Individuals and corporations operating water, lighting, and street-car plants are considered as possessing valuable property in the right, vested in them by their franchises, of using the streets. This privilege, it is said, as well as their tangible property, is a source of their income, and so should be taxed.

Corporation taxes.

Franchise taxes.

The feeling that under the general property tax the very wealthy escape their fair share of the burden has led to the enactment of inheritance and income taxes. The former is the more common, the rates being

higher on collateral bequests, *i.e.*, those descending to others than the immediate family of the deceased. This tax is easily collected, since probate court records contain the amounts bequeathed. Income taxes are not so easily collected, since the same difficulties are encountered in the assessment of incomes as in that of personal property. A few States,* however, levy this tax. There is always an exemption of a minimum amount of income. In both inheritance and income taxes, it is customary to make the rates progressive; the larger the amount taxed, the higher the rate of taxation.

Inheritance and income taxes.

We must now consider numerous other forms of taxation and sources of revenue. The poll-tax, a fixed sum payable by male persons between certain ages, is collected in some States, though prohibited in others. Another means of obtaining revenue is through the sale of licenses. In addition to the liquor dealer's license, which is most common, auctioneers, showmen, pedlers, hackmen, and draymen are licensed. Besides the revenue gained, the governments find the license system advantageous as a means of controlling these occupations.† Government revenue is also derived by the exaction of fees for the performance of official services. These fees are frequently a perquisite of the officer performing the services; but many times it is found more economical to pay the officer a salary and turn the fees into the public treasury.

Poll-tax.

Licenses.

Fees.

When a government owns property that is used by individuals or corporations, a charge is made that becomes a part of public revenue. Under this head come the tolls collected for the use of roads, bridges, and docks; the income derived from the rent of land and water privileges; and the charges made for water, for lights, and for street-car transportation when the plants

Charges.

* Virginia and Massachusetts. † See Police Powers, pp. 101–102.

furnishing these conveniences are owned by municipalities. In cities, we find the practice of levying special assessments upon property that has been enhanced in value by virtue of some public improvement, as, the pavement of a street. This tax may be made to cover the greater part of the expense involved in making the improvement. Special assessments.

The honest and economical expenditure of public money is a matter of no less importance, and of no less difficulty, than equitable taxation. The power to make appropriations is almost exclusively exercised by legislative bodies: town meetings and boards, village and county boards, city councils, and State legislatures. Frequently the actual expenditure of money is made by committees of these bodies. Otherwise it is in the hands of executive and administrative officers. A good system of public accounts requires that these officers shall be directly responsible to the local governing board or to a special officer called comptroller or auditor. The accounts of every officer who handles public funds should be audited; the sources of each part of the money received by him should be correctly acknowledged. He should present vouchers, or receipts, for every amount expended, and each expenditure should be properly authorized by law. Appropriation and expenditure of money. Auditing accounts.

In rural communities and in small cities the appropriation and expenditure of money is conducted with due regard to economy and honest administration; public affairs are not too extensive nor complex to be comprehended and watched by the tax-payers. Popular election, also, serves as a check on official misconduct. But great abuses are frequently present in the financial administration of large cities and in many State governments. Under the influence of a corrupt lobby, a city council or a legislature sometimes makes extravagant Corrupt finances.

appropriations that further merely local or private interests. Legislators have been known to receive compensation from contractors in whose favor large appropriations were made. These abuses have brought about the enactment of constitutional restraints upon the character and amounts of appropriations that may be made. Like restraints are found in the debt limitations fixed by many State constitutions. Local governments are often required to submit to the voters propositions to create local debts. In spite of these restrictions, the amount of local and State indebtedness is larger than the debt of the National government, municipal indebtedness having increased at a very rapid rate within recent years.

Public debts.

SUPPLEMENTARY QUESTIONS AND REFERENCES.

1. Study the system of taxation in your State, making comparisons with the methods described in this chapter.

2. What is the present rate of taxation in your locality? What parts of this rate provide for local, county, State, and school taxes respectively? To what extent is there undervaluation? Do the boards of equalization correct variations in valuations? Does personal property bear its share of taxation? What remedies do you suggest for abuses that exist in these matters? What is fundamentally wrong?

3. How would you answer the questions stated on page 64? See Ely, Taxation in American States and Cities; Seligman, Essays on Taxation; Encyclopedia Articles; Plehn, Introduction to Public Finance.

4. For general descriptions of State taxation see Bryce, I, chapter 43; Encyclopedia of Social Reform.

5. Is a tax on the gross earnings of a corporation equal to one of the same rate on its property? Outlook, 68 : 8.

6. How do you justify the progressive rates levied in inheritance and income taxes? Are special assessments a just means of taxation? Is the poll-tax just?

7. Examine the financial reports of your local, county, and State officers to ascertain the sources of revenue and the purposes of expenditure. In each case, what is the process of auditing accounts?

8. Should church property be exempted from taxation? Forum, 17 : 372–379 ; 434–442.

9. Should the State enact an inheritance-tax law? Forum, 23 : 257–270 ; N. Am. Rev., 164 : 634–636.

10. Should the State enact an income-tax law? Arena, 3 : 525–540.

(See also references to Federal income tax, p. 252 ff.)

11. Taxation of Personal Property, Nation, 66 : 220–221 ; Outlook, 52 : 397–398 ; Taxation of Franchises, N. Am. Rev., 168 : 730–738 ; Taxation of Corporations, Nation, 68 : 370 ; Taxation of Mortgages, Outlook, 64 : 243–244.

CHAPTER VII

JUDICIAL TRIALS

THUS far in our study of government we have had in mind chiefly the processes by which laws are enacted, and executed or administered. If all men could agree upon the exact meaning of these laws, and if all were disposed to obey them, little more government than has been described would be needed. Because neither of these suppositions is true, another distinct department of government—the judiciary—becomes necessary.

Civil cases.

Cases arise through differences in the interpretation of law and through its violation. There are two kinds of cases, civil and criminal. When one party to a suit (the plaintiff) brings action against the other (the defendant) for the protection or enforcement of a private right, we have a civil case. Some common examples of civil cases are those involving questions of the fulfilment of contracts; the relations of employer and employee; the possession of property; the collection of debts; and the validity of deeds and mortgages.

Criminal cases.

In a criminal case it is charged that a wrong has been committed, in most instances against an individual, but of such a nature that the public peace, dignity, and security are also affected. These criminal acts are defined by law, and penalties have been affixed to their commission. At the same time the injured person is generally entitled to compensation, or damages, for the wrong he has received. Because public interests

suffer from the commission of crime, the State is plaintiff in all criminal cases.

The methods of procedure in ordinary cases are very similar throughout all the States. In a criminal case, formal complaint must first be made before a justice of the peace or other judicial officer. A warrant for the arrest of the supposed criminal will then be issued. The arrest may precede these steps if the criminal is caught in the act. If the crime charged is a minor offence, the trial may take place at once in the justice or municipal court. A more serious offence, however, must be tried in a higher court—the district, circuit, or superior court of the county.

Arrest.

The constitutions of most States provide that no person shall be held to answer for a criminal offence of a serious nature unless on presentment or indictment of a grand jury. In those States, the justice court merely examines into the evidence sufficiently to ascertain whether the accused shall be held until the next session of the grand jury. This is composed of citizens chosen by lot from the county. Its sessions occur at stated times and are secret. The district attorney presents to it evidence against persons supposed to have committed criminal acts, and witnesses are brought before it, who are required to give evidence. If there is probability of guilt in any instance, the person charged is *indicted;* that is, he is held for trial. He may be imprisoned, or released on bail. A bail-bond is signed by sureties, who agree to forfeit a certain sum of money if the prisoner does not appear at the trial. The arrest and examination of accused persons by a local justice need not precede the action of the grand jury. The district attorney often produces evidence against persons who as yet stand unaccused; if the grand jury indicts them, they are at once arrested. The grand jury need not await

The grand jury.

Indictment.

Bail.

Present-ment.

the action of the attorney, but may proceed to investigate supposed cases of wrong-doing. If it concludes that certain persons should be brought to trial for offences, they are *presented*.

In some States the grand jury has been dispensed with, for ordinary cases, and all proceedings preliminary to the trial are conducted in a justice court, or other court inferior to the one having jurisdiction to try the case. These proceedings are called the *preliminary examination*. The lower court is given authority to decide, after hearing the evidence presented, whether the accused shall be held for trial. In extraordinary cases, however, provision is made for calling a grand jury.

Petit and trial juries.

For the trial of cases in the principal court of a county a *petit jury* is provided. The juries are summoned by *venire* and are obliged to be in attendance at the court during its session. When a case requiring a jury is called, a *trial jury* is selected by lot from the list of petit jurors. As the names of these are drawn, any juror may be *challenged* by either party to the case. He will be excused by the judge from serving on the trial jury if good reasons are shown. Each side is allowed to reject a certain number of jurors without giving reasons; that is, by peremptory challenges. The drawing of names must continue until twelve are secured who are eligible to serve in the trial of this case.

The process of trial.

In the meantime, witnesses have been *subpœnaed*, and the case begins by the direct examination of its witnesses by the prosecution. They are cross-examined by the defendant's attorney, and the testimony of the defendant's witnesses follows. Then come the arguments of the lawyers. The judge charges the jury as to the law that applies in the case and it then retires from the court to decide what facts have been proved by the evidence. The *verdict* of the jury is followed by the *judgment* rendered by the court. If found guilty,

Verdict and judgment.

sentence is pronounced against the prisoner, though the judge may, if the verdict grossly violates law or justice, set it aside. *Execution* of judgment is the carrying out of the court's decision by the sheriff or other executive officer.

Throughout these proceedings the presumption favors the innocence of the prisoner; the State must prove, beyond a reasonable doubt, that he is guilty. The judge decides legal questions that may arise concerning the conduct of the trial. Either party may make objections to these rulings, and the defeated party may make its exceptions to the court's decisions the basis for a demand for a new trial, or for an appeal to a higher court on *writ of error*. The supreme court, or court of appeal, examines the questions of law that are involved, and either confirms or reverses the decision of the lower court.

Appeals.

A civil case is begun by complaint of the plaintiff against the defendant. A *summons* is issued, calling the defendant to appear in court and make answer to the complaint. Cases involving small sums of money are tried in justice courts, and here the trial is sometimes without a jury, or with a jury of only six men. Cases involving larger amounts are tried in the principal court of the county, where the procedure is quite similar to that described in a criminal case. In the execution of a judgment against the property of a person, the constable or sheriff has power to seize and sell all property that is not exempt.

Trial of civil cases.

It is sometimes claimed by one party to a case that the community where the case arises, or the judge before whom it is to be tried, is prejudiced to a degree that renders an impartial trial impossible. A *change of venue* may then be granted; the case is carried to another court, or another judge is called in to preside at the trial.

Change of venue.

Many problems have arisen, in connection with the administration of justice, that demand the serious attention of citizens. Some of these we shall consider.

The enforcement of law.

(1) When the violation of law is a matter of common knowledge in a community, and no one is accused and held to answer, who is responsible? The basis of a warrant of arrest is a *complaint*, containing a specific accusation, and accompanied by the statement of the complainant, under oath, that in his opinion the accused is guilty. Now, it is the sworn duty of officers to obtain the information upon which a complaint may be based, whenever they know or have reason to suspect that the law has been violated. If they persistently neglect this duty, the sentiment of the community should compel its performance. But at times the public conscience becomes so blunted that officers accept or even extort payments from law-breakers for shielding them from punishment. Not officers alone, but any citizen may make a complaint. But private citizens, particularly those who are most anxious to see the strict enforcement of law, find it difficult to discover sufficient evidence upon which to make a sworn statement. Besides, the prosecution of criminals by persons who do not directly suffer injury from the criminal acts, is likely to cause criticism which is distasteful and hard to bear. It is much easier for the average citizen to let such matters alone, and attend to his own private business. In the meantime, public funds may be stolen, or the health of the community threatened, or its youth put in danger of moral corruption—all for lack of a complaint, specific in its accusations, and supported by definite evidence. These reasons most frequently answer the question, "Why is not the law enforced?" At the bottom, it is a question of public conscience. In communities where a low moral stand-

ard prevails, a few determined leaders, willing to sacrifice time, labor, and comfort for the public good, have sometimes aroused the entire public to action. No service to the community could be more commendable than this.

(2) Other causes for discontent with our judicial system arise in connection with court procedure. There is sometimes the delay of justice through the postponement of cases for trivial reasons; through the exaction of excessive legal charges and court fees; and, finally, through the too frequent decision of cases on grounds that are purely technical, and that seem to most citizens wholly inadequate. The wrong in some of these cases may be traced to the evil practices of attorneys; in others, to corruption of the bench; it seems, too, that in some respects legal systems are unnecessarily complicated. These abuses are very exceptional in most parts of the United States, but in large cities and in some of the more populous States they constitute a serious menace to good government.

Other abuses.

(3) Numerous evils have crept into the administration of the jury system. The local officers who make the original lists from which petit jurors are drawn, are sometimes influenced in the selection of names by political and other illegitimate considerations. In this way a jury may be "packed" in favor of one of the parties to the suit. The old method of making jury lists has been superseded in some States by the appointment of jury commissions composed of prominent citizens of the county, who make the lists under supervision of the court. Again, many citizens who are most competent to serve on juries, shirk the duty, giving trivial excuses or paying fines to escape performing the service. When a panel of petit jurors is exhausted, *talesmen* are summoned from the by-standers—a practice which is apt to

The jury system.

Some evils.

admit men who are wholly unfit for jury duty. Cases of direct jury bribery are, unfortunately, too common, especially in large cities. They are also very difficult to detect. Public opinion should be extremely intolerant of this crime.

It is almost a universal custom to require unanimity in the decision of juries; * thus one man may cause a case to fail of decision. While this is generally considered a wise provision in criminal cases, it many times results in the defeat of justice.

It will be noticed that many of the evils mentioned in connection with the jury system are accounted for by bad administration of its details. The central idea of the system—the participation of citizens in the legal process of determining justice—is of very ancient origin. It was brought from England by the colonists, embodied in their legal codes, and inherited by both State and National governments. The publicity which trial by jury gives to legal procedure, and the educational influence upon those who participate in its workings, are advantages of great weight in its favor. Moreover, it is so firmly fixed in our legal and social fabric that its abolition would be a most radical measure. This fact renders imperative the correction of abuses, wherever they may be found, and the restoration of a pure ideal, in order that the jury system may not become a decadent institution.

Good features of the jury system.

No failure of government is more deplorable than the failure of justice. There have been times when communities, exasperated by the feeble efforts of officers and courts to bring violators of law to justice, have resorted to "lynch-law" as a remedy. This sets an example of

Lynch-law.

* In Nevada, Utah, California, and a few other States, a decision may be rendered by three-fourths of a jury in a civil case. In Idaho, five-sixths of the jury may render a decision.

lawlessness, the evil influence of which far outweighs any attendant good.

Many legal controversies never appear in courts, because they are adjusted between the parties concerned through the efforts of the attorneys. Other disputes are voluntarily submitted to arbitrators by whose decision the disputants agree to abide. If more cases could be settled out of court, much expensive litigation would be avoided, and the cause of justice would not suffer. Efforts have been made to establish courts of conciliation in some States, but with little success.* Arbitration.

Supplementary Questions and References.

1. What guarantees are contained in the constitution of your State safe-guarding the rights of accused persons? Are similar rights secured in all countries?

2. As illustrating the process of trial, obtain and fill out blank forms for complaint, warrant of arrest, search warrant, subpœna, venire, execution, indictment.

3. Is the grand-jury system the best method of bringing offenders to trial?

4. What is the established method of selecting petit jurors in your State? Can you suggest improvements? Visit a court while in session, and observe the selection of a trial jury; also, the examination of witnesses. What fees are paid to witnesses and jurymen?

5. Find the meaning of the following terms: Damages, costs, stay of execution, injunction, certiorari, habeas corpus (see p. 340), quo warranto, mandamus.

6. Should the jury system be abolished? Forum, 22: 107-116; Nation, 67: 163; Arena, 22: 312-319; Rev. of R's, 12: 206-208; Pop. Sci. Mo., 47: 375-382; Atl. Mo., 76: 258-262.

* North Dakota is the only State in which they are extensively employed. For description of the system in Norway and in North Dakota, see Atl. Mo., 68: 401-406 and 72: 671-677.

7. State judiciary systems are the subject of chapter 42 in Bryce, I.

8. What is perjury? To what extent is it practised in the courts? Are perjurers frequently punished? What are the reasons for these conditions?

CHAPTER VIII

CHARITABLE AND PENAL INSTITUTIONS

THE support of the destitute falls first upon their near relatives; when this resource fails, public charity becomes necessary. Much the greatest part of public relief is given by local governments. Where the town system is strong, the work is in charge of the town board or of a special town officer. In the South the county commissioners, or other county officers, administer relief. In many States, particularly in the West, both town and county are interested. Towns and cities frequently refuse to support paupers who have not "acquired a residence" within them; and the burden then falls upon the county, or, as in Massachusetts and New York, upon the State.

The support of paupers.

Two general methods of dispensing alms are practised. 1. Out-door relief means the giving of aid at the home of the pauper. This is a convenient method in cases of temporary want, and in the relief of persons who are partially self-supporting. Many local governments make a practice of giving goods, or orders for goods, to paupers. In rural communities, where the circumstances surrounding every family are well known, this method of relief works satisfactorily. But in cities, and in the administration of relief by county officers, it is possible for individuals to impose upon the public by securing aid when it is not deserved. The evil here is not only that of stealing from the public treasury, but also the evil of pauperizing the individual and the family.

Out-door relief.

This is a place for investigation and reform in many communities.* Sentimental ideas of charity and loose business methods sometimes cause the harm of out-door relief to over-balance the good accomplished.

2. In-door relief. Towns frequently pay for the support of their poor in private houses; and paupers are sometimes bound out to service on contract. But alms-houses, or poor-houses, become necessary when the number of paupers is large. These are most usually maintained by counties and cities. When a poor-house is located on a farm, and when the inmates are kept employed in farming and other industries, these institutions become most helpful, and may also be partially or wholly self-supporting. The establishment of a poor-house sometimes has the effect of decreasing the number of paupers who apply for aid from a county.

In-door relief.

Within recent years it has been generally recognized that children should not be kept in poor-houses with adults, since such surroundings are exceedingly demoralizing to child-nature. There are often State schools for dependent children, where education and some form of industrial training are provided for the inmates. Efforts are made to secure the adoption of these children, when of suitable age, into families.

Dependent children.

For the sick and injured medical attendance is provided by local governments. In the cities, hospitals are maintained at public expense.

Hospitals.

The question of providing for the unemployed in times of temporary distress is particularly difficult in the large cities. It seems necessary, at times, to estab-

* The Secretary of the State Board of Charities of Indiana said in 1897: "Throughout all the State the conditions are the same—no uniformity, little or no investigation, little attention to common business principles, and no sane, deliberate, and shrewd inquiry into the actual needs of applicants or into the best methods of supplying those needs." National Conference of Charities and Corrections, 1897.

lish free soup-kitchens and agencies for the distribution of food and clothing. Cities have sometimes provided employment upon public works in such cases. Under the Detroit plan, devised by Mayor Pingree, the poor are allowed to use vacant lots as vegetable gardens.*

The unemployed.

It is often difficult to distinguish between the homeless seeker for employment and the professional tramp, who might rather be included among the criminal classes. But in most places both are treated in the same way, and, as a consequence, men who begin their wanderings with good intentions degenerate, under kind treatment, into genuine tramps. The local government frequently gives these vagrants food and lodging and then sends them on to the next town. Or, they may be arrested for vagrancy and sentenced to a term of imprisonment. Many times the city or county keeps them during the winter in a poor-house or municipal lodging-house and releases them as warm weather approaches. None of these methods of treatment is satisfactory because no effort is made to test the vagrant's desire to obtain work, or to deter him from continuing to lead a life of laziness and dependence on charity. Cities that have established wood and stone yards, in which the applicant for assistance is compelled to earn at least a part of his support, find the number of tramps considerably decreased.

The tramp problem.

The support of the poor seems, at first glance, one of the simplest operations of government, but we have seen that numerous difficulties are involved. How can we aid the deserving poor, and at the same time avoid making them less willing or able to support themselves? The same question is, or should be, prominent in all cases of private charity, for the evil of pauperizing the poor is one of great magnitude. And the citizen should

* See Arena, 15 : 545–554.

see that in his private charities he does not aid tendencies which will result at some future time in increasing the difficulties of this problem.

Compulsory insurance.

In Germany there is established a system of compulsory insurance. All persons earning regular salaries of $476 or less contribute to a fund from which they may receive support in sickness and old age. Parts of this fund are also contributed by employers and by the German government. Encyclopedia of Social Reform, 740.

Defectives.

Public control of defectives is necessary on the grounds of education, public health, and public security. Because of the relatively small numbers included and the special treatment that is required, it is most economical for the State, rather than for the local governments, to care for these unfortunate classes. Hence we have the excellent State institutions for the blind, the deaf and dumb, the insane, and the feeble-minded.

The insane.

In no way can we measure the growth of the humanitarian spirit during the nineteenth century better than by contrasting earlier with present methods of treating the insane. Formerly they were regarded as criminals, confined in foul prisons, and brutally treated. Insanity is now regarded as a disease, and scientific treatment results in the curing of a large proportion of the cases. Laws quite uniformly require judicial procedure for the committal of an insane person to an asylum. It is only since about the year 1870 that the insane have been generally transferred from county poor-houses to State asylums. Evidently, the chronic and harmless insane should be treated differently from those who are violent and require medical treatment. But in most States all are confined in the same State asylums. Wisconsin has a plan, highly commended by experts, under which the chronic insane are supported, subject to State supervision, in a limited number of county asylums. These are

generally under the same management as the county poor-houses. In State hospitals, then, the conditions are most favorable for these who are under the physician's care.

The feeble-minded.

Within recent years a score of States have established asylums for feeble-minded children, where they receive proper educational and industrial training. In a few States there are homes for epileptics.

State boards of charities.

It was formerly usual to have each charitable institution of a State administered separately by its board of directors or trustees. At present, however, central boards of charities exist in most States. These are of two kinds: (1) Advisory boards, that merely inspect and report recommendations, each institution having its own board of trustees. Such boards are most common, and are composed of unsalaried officers. (2) A board of control may administer the entire charitable system of the State, and appoint a superintendent for each institution. Such boards are also given power to inspect the construction and control of local poor-houses, jails, and asylums. The officers of these boards are salaried. The danger of this system is that political influences will prevail. But there are advantages in the method of central control; through it, the influence of high ideals and scientific methods may be felt in the local institutions.

Old methods of punishment.

Methods of punishing criminals have undergone great changes since the establishment of the older State governments. At the beginning of the nineteenth century the clipping of ears, branding with a hot iron, the stocks, and the pillory had not entirely disappeared. Prisons were foul pens. But the barbarous mutilation and public exposure of early times have passed away, and prisons are now conducted with some regard to the health and comfort of the prisoners. We now reject that theory of

punishment which considers its only end to be retribution. The principle is generally accepted that for the protection of society the criminal must not be merely confined and punished, but *reformed* as well. Some practices introduced into State prisons indicate the progress of this idea. Instances are found in the excellent provisions for securing the good health of the inmates; for it is recognized that an unsound physical condition is often the foundation of a criminal nature. So, too, prison libraries, reading-rooms, and study classes give convicts a chance for mental improvement. Very commonly, good conduct on the part of the prisoner will result in a reduction of his term of imprisonment. It has been urged that no fixed term of confinement should be set, but that the convict should be held in prison until, in the judgment of the authorities, he is fit to be at large. This system is called the *indeterminate sentence.**

Modern prisons.

In a few States† the prisoner may be released on parole or probation. He must find employment, avoid bad associations, and report periodically to a parole officer.

Release on parole.

Great evil is wrought through the association in prisons of first offenders and persons of slight criminal tendencies with hardened criminals. For this reason we have State reformatories and industrial schools for boys and girls. Here they are given an education and taught useful trades. Recently, in two States,‡ the younger and less hardened offenders among the men have been assigned to separate institutions where conditions are made as favorable as possible for their reformation. If they show themselves incorrigible, they are returned to the State prison.

Reformatories.

* C. D. Warner, The Independent, 51: 598–600.

† Massachusetts, Indiana, Missouri, Alabama, Colorado, and Michigan.

‡ Indiana and Wisconsin.

It is generally agreed that the confinement of prisoners without occupation is both cruel and demoralizing. Several systems of prison labor have therefore been tried. (1) The *lease system*, common in the Southern States, permits the sale of prison labor to the highest bidder. The prisoners may be employed either within or without the prison, and are subject to the control of their employers. In many instances they are employed in working mines and quarries, living in penal camps, where one would scarcely expect to find them surrounded by the proper reformatory influences. (2) Under the *contract system* the labor is performed within the prison, under the usual prison discipline. Some form of manufacturing is carried on, the contractors furnishing the foremen, the materials, and to some extent the tools and machinery. They pay a stipulated price for each day's labor performed by the prisoners. (3) The *piece-price system* leaves the work of prisoners under the supervision of prison officials, the contractors agreeing to furnish the materials and to pay a specified price for each piece of the finished product. (4) Under the *public-account system* the State conducts the entire process of manufacture, as an individual might, disposing of the product on the market.

Systems of prison labor.

In 1895 the output of the higher penal institutions of the entire country was $19,042,472 worth of manufactured goods.* It has been argued that this competition of the State with private enterprise has the effect of lowering the wages of workingmen. Great opposition to prison labor has therefore arisen. In a few States, prisoners are employed in the manufacture of all the articles needed in the equipment of the State institu-

* Wright, Practical Sociology, 379. But this was only one five-hundredth part of the total manufactured products of the United States in 1890.

tions. But no uniformly satisfactory solution of the problem has been reached.

The prevention of crime and pauperism.

In the administration of charitable and penal laws we are at present concerned chiefly with relief, punishment, and reformation. But the systems employed too often tend to perpetuate the evils we wish to cure. With the spread of more rational ideas concerning pauperism and crime, public attention must be directed toward the *prevention* of both. As population becomes more dense in the United States, the problems assume greater proportions. We have found State control the most satisfactory method of managing the greater part of the curative processes; it may be suggested that the proper preventive measures are largely matters for private and local support. But the further study of this subject comes more properly within the field of sociology than within that of government.

Supplementary Questions and References.

1. What methods of public and of private charity are employed in your community? Is there careful examination into the merits of cases? Is there duplication of charities? Which, the public or the voluntary work, is on the whole more effective?

2. What is your remedy for the tramp problem?

3. In Delaware certain offenders are whipped at the post. What are the merits of this method?

4. Outline the system of State charities in your State. Can you suggest improvements?

5. Methods of relief work in various cities during the hard times of 1893–94 are discussed in Rev. of R's, 9 : 29–37.

6. Many old forms of punishment are described in Earle, Curious Punishments of By-gone Days.

7. What was the condition of prisons at the beginning of the nineteenth century? McMaster, History of the United States, I, 98–102.

8. What are the effects of exposing offenders to public gaze?

9. The most famous reformatory is that at Elmira, N. Y. An illustrated year-book is published by the inmates. See also N. Am. Rev., 140 : 291–308.

10. What is the penal system of your State? Study the reports of State officers having charge of penal and charitable institutions.

11. What is the average age of convicts in the United States? What proportion are regarded as incorrigible? Wright, N. Am. Rev., 164 : 279.

12. Charities. The best work is Warner, American Charities. See also Reports of National Conference of Charities and Corrections; Encyclopedia of Social Reform; Wright, Practical Sociology, 322–330; Atlantic Mo., 57 : 449–454; State Care of Dependent Children, N. Am. Rev., 171 : 112–123; Rev. of R's, 9 : 38–40; Education of the Feeble-Minded, N. Eng. Mag., 22 : 6–20; The Abuse of Public Charities, Pop. Sci. Mo., 55 : 155–163.

13. Penal and reformatory institutions. Reports of National Conference of Charities and Corrections; Reports of International Prison Congress; Encyclopedia of Social Reform, "Penology;" Wright, Practical Sociology, 350–389; N. Am. Rev., 158 : 332–342; Boston's Penal Institutions, New England Mag., 17 : 613-629. Progress in Penology, Forum, 30 : 442–456. Prison Labor, N. Am. Rev., 164 : 273–282; 758–760; The True Purpose of Penitentiary Penalties, Arena, 23 : 400–404.

CHAPTER IX

EDUCATIONAL SYSTEMS

THE maintenance of public schools is a function of the State governments. Though the National government has aided in this work, as we shall see, its authority does not extend over our systems of elementary and higher schools.

Local control of schools.

In the South the county, and elsewhere the town, is usually divided into districts solely for purposes of school government. Now the ways of dividing authority between the town or county on the one hand and the school district on the other are so many that a general description is impossible. In no other field do we find such great variety of local arrangements; sometimes several forms may be found in the same State. This is partly because school government is the most local of all government. Only to a slight extent has it felt the unifying effect of central State authority. When the

The school district.

district absorbs most of the school functions and becomes the real unit of organization and administration, we have district meetings of voters. These are similar to town meetings, but they are held at a different time, since school business is kept distinct from town affairs. This is the most democratic method possible of raising taxes, electing officers, and managing school affairs. In many States, however, there is a town school meeting and the districts are organized merely for administrative purposes, the different district schools being managed more or less independently.

Any form of the district system has certain serious defects. Under this system the schools of rural districts remain small, isolated, and poorly graded, while low salaries and poor teachers are too common. The centralization of authority in the town, or in the county, has some points of advantage. The town system of school government exists in some of the New England States, Pennsylvania, Ohio, and Indiana, and its adoption is optional in other States. Under this system there are fewer schools, and, it is claimed, these can be better graded and equipped. With the expenditure of less money there may be better salaries and consequently better teachers. The same advantages may be intensified by having but one school, centrally located, for each town. The chief difficulty lies in the distance of such a school from the pupils' homes. But this has been satisfactorily overcome in Ohio, by the transportation of children at town expense.*

The town system.

Those who favor the town system maintain that under it the problem of school supervision may be more satisfactorily dealt with than under the district system. It is usual to place upon district or town officers the duty of visiting and inspecting schools, besides the oversight of financial interests and the employment of teachers. Because these officers are busy in other pursuits and have slight knowledge of the purely professional aspects of school systems, very little real supervision is accomplished. In nearly all States there are county superintendents, whose principal duties are supervisory. In most cases, however, counties are so large that the superintendent's visits to any school are

School supervision.

The county superintendent.

* See Report of the Committee of Twelve, National Educational Association, 42–53, 135–141, for reasons for and against consolidation and transportation of pupils. Also, Report of Commissioner of Education, 1897–98.

necessarily infrequent and brief. In short, the district seems to be too small, and the county too large, for adequate school supervision. Where the town system prevails, officers are less numerous, and, it may be, more capable. Supervision will at least be more uniform, and perhaps more effective. If the schools are consolidated, the principal of the central school may have supervisory powers. Another plan for the solution of this problem is the union of a number of towns (as in Massachusetts) for the employment of a competent supervisor.

Politics in school affairs.

The introduction of party politics into school affairs frequently brings incompetent men into office and in many ways hinders educational progress. The popular election of county superintendents, usually at general elections, has a tendency to make that office political rather than professional. Less than one-half of the States have prescribed educational qualifications for the position of county superintendent. Yet his work goes far toward determining the professional tone of the schools. By fixing a high standard for the teachers under his authority, by efficient work in county institutes and other meetings, and by frequent contact with the people of the county, he may do much to aid educational progress.

State supervision.

In nearly every State of the Union there is a State superintendent, or a State board of education, or both. Methods of selection and organization are various. The superintendent or the board has authority to interpret and enforce the general school laws of the State; and to supervise, in a general way, the school system. An additional function is "the higher and far more important work of directing educational movements, of instructing the people, and of creating public opinion and arousing public interest."

In school affairs, as in other matters of local govern-

ment, each large city has its peculiar system.* In many cities, the school system is not only managed as a separate department, but its workings are almost independent of the central legislative and executive machinery of the city. There are special times for school elections, and the school board is not responsible to either council or mayor. In other cases, different degrees of relationship exist between these authorities.

City school systems.

Boards of education in cities may be either elected or appointed. In either case, the selection of members for political reasons is in many cities the cause of serious offences against the rights of the children. Much confusion and ineffective management result from the failure to discriminate clearly between legislative and executive functions in school government. Legislation is properly intrusted to a board, but when a policy is once determined upon, it can best be executed by single officers, rather than by committees of the board. Responsibility and prompt action are secured by the concentration of authority in one officer. Another source of evil is the confusion of the business and the professional sides of school government. Boards of education are more competent to supervise business affairs, and so generally leave the determination of courses of study and methods of teaching to educational experts. But other professional affairs, such as the employment of teachers and the selection of text-books, too often remain within the jurisdiction of the board. This body frequently acts under the advice of the superintendent of schools, but in other cases professional interests are subordinated to business or political considerations.

Some difficulties in cities.

School systems and courses of study are most highly developed in cities; here, too, equipments are most

* Report of the Committee of Fifteen, National Educational Association, 114-132, 198-226.

complete. In 213 cities public kindergartens were maintained during the school year 1898-99. Manual training was taught in the public schools of 170 cities having a population of over 8,000.* Separate schools for truants are a feature of a few city systems.

Illiteracy.

In most States there are compulsory education laws, applying uniformly to rural and city populations. The following statistics of illiteracy are interesting; they indicate the percentage of the total population, ten years of age and over, who are unable to read and write.†

	Per cent.		Per cent.
North Atlantic States....	6.2	North Central States....	5.7
South Atlantic States....	30.9	Western States.....	8.3
South Central States....	29.7	Average for United States	13 3

The high percentage in the South is mainly due to the presence of the negro population. In those States, separate schools for the two races are provided.

With these figures we may compare statistics of illiteracy in foreign countries.

	Per cent.		Per cent.
Switzerland.....	2.1	Belgium.....	14.8
Scotland.....	5.15	Austria	15.4
Netherlands.....	6.5	Italy.....	40.3
England.....	7.	Spain.....	62.66
France.....	7.4	Russia.....	70.8

Text-book laws.

The adoption of text-books is intrusted in some States to the State board of education. More often the laws allow each local board to act independently, while the frequency with which books may be changed is restricted. In some States it is the rule that text-books must be furnished free to pupils; in others, again, this policy is optional and the question of free books may be settled at school elections. The State of California publishes a series of texts whose use is obligatory in the common schools.

*Report of the Commissioner of Education for 1898-99, 2257-2262, 2139-2142.

† *Ibid.*, 1892-3, 115-155.

Excellent systems of high schools have been developed in recent years. Those located in the large cities have their own courses of study and methods of management. But the high-school systems of villages and small cities have been fostered under uniform State laws. High schools.

During the school year of 1898-99 the number of pupils enrolled in the common schools of all the States was 15,138,715.* This was almost 70 per cent. of the total number of children between the ages of 5 and 18 years. The pupils enrolled attended school on an average of ninety-eight days each, or nearly five school months. The entire amount of money raised for the support of the common schools was $204,017,612. The expenditures were $197,281,603. School revenues.

Whence, it may be asked, was this enormous revenue derived? From several sources.

1. The greatest part, about 70 per cent., came from local taxation. This emphasizes the fact, already noticed, that local governments have the largest share in the control of our common-school systems.

2. About 18 per cent. of the total amount was the result of State taxation. The proportions of State and local taxes vary greatly in the different States. Some levy no State tax whatever for this purpose. Sometimes a certain per cent. is levied for school purposes on each dollar's worth of property in the State. Or, there may be a poll or other special tax. This method of deriving school revenue is commendable because in the poorer sections of a State lack of revenue from local sources may keep the schools upon a low grade. Similarly, when widely different amounts of taxes are raised by different districts of the same town, it has been

* These and the following statistics are found in the Report of the Commissioner of Education for 1898-99, Vol. I.

recommended that the town be the unit of taxation, rather than the district.

3. The amount of school revenue yielded from miscellaneous sources was 7.6 per cent. of the total.

4. Permanent school funds and rents form the fourth source of revenue (4.4 per cent. of the total).

Origin of school funds.

The origin of these funds must now be accounted for. When the States laying claim to the territory north of the Ohio River and east of the Mississippi ceded their claims to the United States, Congress passed the "Land Ordinance of 1785" containing the following provision: "There shall be reserved the lot number sixteen of every township for the maintenance of public schools within the said territory." * The same purpose is seen in that provision of the Ordinance of 1787 which declared that "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Nowhere do we find better stated the ultimate purpose of public education.

National land grants.

The policy thus asserted was carried into execution whenever any State in which the United States owned lands was admitted to the Union. In each case section sixteen of each township was set aside for the support of the common-school system. Since 1848 every such State has received for this purpose both section sixteen and section thirty-six of every township. When, therefore, these lands were sold to settlers, the proceeds were gathered into permanent school funds; these are invested in interest-bearing securities, and the income derived therefrom is annually distributed among the schools.

These funds have been increased in various ways. To most of the Western States Congress gave 500,000 acres

* Hinsdale, The Old Northwest, 259.

of land, to be devoted, originally, to the support of internal improvements. Some of the States have dedicated the proceeds of these lands to educational uses. Many States have received swamp and salt lands, which in some cases have gone to increase school funds. Since the National government owned no lands in the original States, they have not been benefited by its generosity in the donation of lands. But many of these States have set aside their own wild lands and in other ways have established permanent school funds.

The colleges and universities of the United States number 484. Of these, the greater number are supported by endowments and donations from private sources. Most States, particularly in the West, tax the property of their citizens to support State universities.* The Federal government has been as generous in the support of higher education as in the aid granted to the common schools. When the sale of lands in the Northwest Territory was authorized, Congress provided that not more than two complete townships (seventy-two square miles) of land should be given to each State therein erected for the support of higher education. Every new State in which the United States owned land has reaped the benefit of this policy, some having received more than two townships. In some of the older States, these lands and the common-school lands were sold at very low prices. Bad management in this respect, and in the care of the funds thus established, has caused immense loss to these States. The newer States, profiting by this experience, have been more judicious.

Higher education

Federal aid.

In 1862 Congress granted to each State of the Union, and to each new State to be admitted later, as many times 30,000 acres of land as it had Senators and

* The total number of colleges and universities supported by the States is forty-three. In several States there is more than one such institution.

Agricultural colleges.

Representatives in Congress. The income of the funds arising from the sale of this land was to support colleges of agriculture and mechanic arts. In 1887 each State was given $15,000 annually for the support of agricultural experiment stations. By a law of 1890 this amount was to be increased by $1,000 each year until the appropriation reached $25,000 for each State. This law provided that this money "shall be applied only to instruction in agriculture, the mechanic arts, the English language, and the various branches of mathematical, physical, natural, and economic science, with special reference to their applications in the industries of life and to the facilities for such instruction." Technical schools are in this way aided in many States.

Professional schools.

In connection with the systems of higher education we find professional schools of various kinds. These include colleges of law, medicine, dentistry, pharmacy, veterinary medicine, and normal schools. Commercial and business courses are a feature in a large number of colleges, universities, and high schools.

Supplementary Questions and References.

1. What reasons can you give for the public support of common schools? Do the same reasons justify taxation for the support of colleges and universities? How do you justify State support of professional and technical schools? Should schools for other professions and trades be included?

2. Study the organization of the school system in your State. (*a*) What is the unit of school taxation? Of administration? Should these be larger or smaller?

(*b*) What officers conduct school affairs? Can you suggest improvements in the system?

(*c*) How is school supervision secured? Is it effective? In what ways does the State control the common-school system?

(*d*) What are the laws of the State upon the subject of compulsory education? text-books?

(*e*) Study the revenues and expenditures of your school system. Comparison with other States in different sections of the country is possible from the reports of the Commissioner of Education.

(*f*) Ascertain the amount of Federal aid received by your State for education.

3. What inequalities in taxation for schools exist in some States? Report of the Committee of Twelve on Rural Schools, 29–30.

4. What is the best method of electing school boards in cities? Hinsdale, Studies in Education, 265.

5. Students may get ideas for the graphic representation of educational statistics from the Report of the Commissioner of Education, 1897–98, pp. lxxxvii–xcvii.

6. History of land grants for schools. Boone, Education in the United States, 88–93; Hart, Essays on American Government, 244–247; Harper's Mag., 68 : 471–476; Stearns, Columbian History of Education in Wisconsin.

7. Schools in colonial times. Commissioner of Education, 1896–97, II, 1165; McMaster, History of the United States, I, 24–27; Earle, Child Life in Colonial Days; Lodge, Short History of the English Colonies in America, 74–76, 464–467; Fiske, Old Virginia, II, 245–253; Boone, Education in the United States, 9–19.

8. Use of lotteries in support of schools. Boone, 87–88.

9. Need of reform in city schools. Encyclopedia of Social Reform, 536–537, 539.

10. Should there be a National University at Washington? Forum, 28 : 663–676.

CHAPTER X

THE EXERCISE OF THE POLICE POWER

We are accustomed to associate with the word "police" the idea of a body of officers to whom the enforcement of law is entrusted. But the legal significance of the word is much broader. In this sense we speak of the police power of a State as its system of internal regulation "by which persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the State," *i.e.*, of the citizens. It is assumed that all property of the State is held subject to those general regulations which are necessary for the common welfare. So, too, in the conduct of private business and in the family and social relations of life, citizens are not entirely free to determine their own conduct; but through its police regulations the State insures "to each the uninterrupted enjoyment of his own rights so far as is reasonably consistent with a like enjoyment of rights by others." *

We are most familiar with the police regulations that are calculated to preserve public order and prevent offences against persons and property. A number of other instances in which the police power is used will now be noticed.

1. Individuals are subjected to governmental control for the preservation of public health. Until recent years, health and sanitary laws were matters of local govern-

* Cooley, Constitutional Limitations, 704, 706.

ment only; but at present State boards of health are almost universal. The establishment of these boards has made the regulations upon this subject more uniform; at the same time the administration of laws has become more thorough. For popular ignorance and prejudice often prevent the execution of adequate sanitary measures. This is especially true when contagious diseases prevail. Stringent regulations then become necessary for disinfection, isolation, and quarantine. Local boards of health exist in the cities, but they are not so common in rural districts. These boards are made subject to control by State boards.

Health and sanitation.

In the interest of public health, private property may be declared a nuisance and removed or destroyed at private expense. Many cities have officers who inspect plumbing and appliances for sewage disposal. The inspection of foods of all kinds is a function of health boards. Most States prohibit the sale of cigarettes to minors as being injurious to health. These measures are preventive in character, and their scope is constantly being enlarged. The chemical examination of water supplies reveals an important source of disease. A number of cities have forbidden expectoration in street-cars and public places. The establishment of hospitals and sanitariums for tuberculous patients has been begun in some localities. Health regulations also extend to the examination of horses and cattle and their condemnation when diseased.

2. The public is protected from danger in other ways than by these health regulations; for instance, by laws requiring that buildings containing halls for public assemblages shall have doors that swing outward, and by laws compelling the erection of fire-escapes on tall buildings. In cities, wooden structures may not be built within the "fire limits" that are prescribed by ordi-

Protection from danger.

nances. Private property may be destroyed to prevent the spread of fire.

The law regulates certain kinds of business on the ground that carelessness might render them injurious to individuals or to the public. For this reason the sale of explosives, fire-arms, and poisonous drugs is accompanied by legal restraints. So in the use of a public wharf or a market-place, the interests of the few must be subordinated to the welfare of the greater number.

3. The conduct of individuals upon public highways is subject to legal control; the law may fix the rate of speed and require vehicles to turn to the right. Travel by water is likewise regulated. The States declare certain rivers and lakes within their limits to be navigable waters; these become highways, open to the public.* Consequently, such matters as the conduct of vessels, the building of dams, bridges, and docks are regulated under the police power of the States.

Travel and commerce.

4. Persons and corporations are subject to police regulation because of the nature of the service they render, as in the case of the "common carriers." A common carrier is "one who holds himself as a carrier, inviting the employment of the public generally. The most familiar classes of common carriers are railroad companies, stage coach proprietors, expressmen, truckmen, ship-owners, steam-boat lines, lightermen, and ferrymen." Any person falling within this definition "is bound to serve without favoritism all who desire to employ him, and is liable for the safety of goods entrusted to him, except by losses from the act of God or from public enemies, or unless special exemption has been agreed upon; and in respect to the safety of passengers carried he is liable to injuries which he might

Common carriers.

* But if they are used in interstate or foreign traffic, they are subject to control by the National government. See p. 200.

have prevented by special care." * Frequently the maximum rates to be charged by common carriers are fixed by law. This is also true in those kinds of business that involve a more or less complete monopoly. It is held that these are *quasi* (*i.e.*, in a certain degree) public employments. The water, lighting, and transportation services of a city are subject to control for this reason. Telegraph and telephone companies resemble common carriers very closely, though they are not considered such in law. Yet they are often made subject to the same regulations and liabilities as common carriers. Legal restraints are enacted for certain employments in which there is liability that patrons will not receive fair treatment. This is true (aside from health regulations) regarding the sale of milk, cheese, and oleomargarine. On the same principles, too, the management of hotels and theatres is controlled.

Public-service industries.

5. Certain employments and practices are forbidden or placed under restrictions because they are in themselves immoral. The pursuit of gambling in its various forms falls under this head. The State interferes to prevent the infliction of cruelty upon animals because acts of this nature are immoral; and also because the moral sense of people is shocked by the sight or knowledge of their occurrence. Partly on the ground of the immorality of intemperance, and partly because of the dangers with which the public is threatened through this vice, the manufacture and sale of intoxicating liquors is the subject of State control.

Restricted employments.

In the regulation of employments, for whatever reason, it is customary for the State to require licenses. This is for the purpose of preventing persons from entering these employments indiscriminately. Accompanying the license is a fee, the amount of which may

Licensed employments.

* Century Dictionary.

be (1) simply sufficient to cover the expense of inspection and regulation; or (2) it may be large enough to discourage or even to render impracticable the pursuit of the licensed business.* In its legal aspect, then, a business which is licensed is presumed to be legitimate, but to require regulation in order that the public may not suffer from abuses that may arise in connection with it.

Liquor laws.

The laws regulating the manufacture and sale of intoxicating liquors are very numerous. Some of the most common of these prohibit the sale to minors, to intoxicated persons, and to habitual drunkards; also, the sale of liquors is forbidden on Sunday, on legal holidays, election days, and during certain hours of the night. The following restrictions are found in different States. There shall not be more than one saloon to a certain number of inhabitants. There shall be no saloon within certain distances of public schools, colleges, churches, or parks. Screens and all obstacles to a clear view of the place where liquor is sold are prohibited. In some States liquor must be sold only with eatables or in connection with lodging-houses and hotels. In other States liquor must never be sold under these conditions. The consent of the owners of property in the same block or near the saloon is sometimes required. Liquor dealers are made responsible for damage caused by an intoxicated person who is known to be dangerous when under the influence of liquor.

* The term "license fee" is often attached to taxes; *e.g.*, the license fees paid under United States law on the manufacture and sale of liquors. The idea here is simply the gaining of revenue. Many States require license fees with the sole purpose of raising revenue. See p. 66. For the fiscal year ending June 30, 1896, the license fees, special taxes, and fines imposed upon the liquor business by States, counties, and municipalities amounted to $50,569,313. During the same year the revenue of the United States from this source was $114,450,862. Bulletin of Department of Labor, No. 17, July, 1898.

The governmental regulation of this business has extended in a few States to the absolute prohibition of all manufacture and sale of intoxicating liquors. Prohibitory laws "are looked upon as police regulations established by the legislature for the prevention of intemperance, pauperism, and crime, and for the abatement of nuisances." * Prohibitory laws.

The following States prohibit the manufacture and sale of intoxicating liquors, except for medicinal, mechanical, and scientific purposes: Maine, Kansas, and North Dakota. In New Hampshire the manufacture alone is permitted. All but four States of the Union have statutes requiring that physiology be taught in the common schools, with especial reference to the effects of stimulants and narcotics upon the human system.

The difficulties in the enforcement of prohibitory laws may be grouped under several heads. (1) In certain localities, particularly in cities, we find the lack of public sentiment favorable to their enforcement. In these places officials have sometimes engaged systematically in the practice of fining or taxing saloon-keepers without attempting to enforce the prohibitory laws. (2) There is great difficulty in preventing the importation of liquors into prohibition States.† (3) Since the use of alcoholic liquors for medicinal and mechanical purposes is exempted from the prohibition, druggists are licensed to dispense them under prescription by a physician or some similar regulation. This leads to violation of the law, drug-stores sometimes becoming saloons in everything but name. (4) There are a multitude of devices for evading prohibitory laws, many of which involve official perjury and corruption. Enforcement of prohibition.

Local option contemplates the settlement of the liquor-license question by each local government for itself. In

* Cooley, Constitutional Limitations, 718.

† See interstate commerce, p. 199.

some States the issue of "license or no license" must be voted upon by the people each year. Or, again, a vote may be taken if a certain number of voters petition for it.

High license.

High license means the exaction of large license fees for the purpose of discouraging the liquor business. The combination of local option and high license exists in some States. The fees are in some cases $500 or more. Saloons in cities may be required to pay more than those in towns of the same State, $1,000 being not an unusual amount for the former.

The granting of licenses is most frequently in the hands of the local governing board. Bonds, which are liable to be forfeited for non-compliance with the law, may be required of the licensee. Sometimes special commissioners are given charge of the entire matter of granting and revoking licenses. The exercise of these powers by officers opens another avenue through which corrupt influences enter politics. The control of the liquor business by licensing authorities and by the police should receive the constant attention of citizens. In no other way will the enforcement of law be secured.

The dispensary system.

In the State of South Carolina there has been established, since 1893, a peculiar method of dealing with the liquor problem, known as the Dispensary System. A Board of Directors of the Dispensary System is elected by the General Assembly. This board appoints a Commissioner who buys all liquors that are sold, with the sanction of law, in the State. Their sale is under the supervision of County Boards of Control, who appoint Dispensers in towns and cities to retail the liquor in the original packages. The State has a monopoly of the liquor business, and by selling at a good profit realizes considerable revenue; this is divided between the counties and the municipalities. Another interesting system is that in operation in Gothenburg and other cities of Sweden.

SUPPLEMENTARY QUESTIONS AND REFERENCES.

1. How do you reconcile the legal restrictions enumerated in this chapter with the inherent right to "life, liberty, and the pursuit of happiness" guaranteed by State constitutions?

2. What provisions relating to the topics mentioned in this chapter are found in the statutes of your State? Can you discover other provisions illustrating the exercise of the State's police power?

3. Should the National government inaugurate a system of health regulation? N. Am. Rev., 165 : 733–752; 166 : 543–551; 167 : 527–533; Outlook, 61 : 155–156; Forum, 26 : 684–692.

4. Are the liquor laws of your locality enforced? Which method of controlling the sale of liquor do you prefer? For what reasons?

5. The general powers (including police powers) of public corporations are discussed in Dole, Talks About Law, chapter 26. For common carriers, see Dole, pp. 372–377.

6. The following references are available for topics relating to the liquor problem: Bliss, Encyclopedia of Social Reform; Wright, Practical Sociology, chapter 23; Wines and Koren, The Liquor Problem in its Legislative Aspects (this book contains a general discussion of the problem, chapters upon prohibition in Iowa and Maine, and the liquor laws of South Carolina, Massachusetts, Pennsylvania, Ohio, Indiana, Missouri, and New York); The Gothenburg System, Fifth Special Report of the Commissioner of Labor (1893); Economic Aspects of the Liquor Problem, Twelfth Annual Report of the Commissioner of Labor (1897–98). (Contains digest of State laws and statistics of revenue from the liquor business.)

7. LIQUOR LEGISLATION.—Eliot, Atl. Mo., 79 : 177–187; N. Am. Rev., 147 : 638–644; 156 : 728–738; 162 : 287–291; 292–295; Forum, 21 : 595–606; 18 : 339–351; Pop. Sci. Mo., 44 : 577–593; 55 : 438–450; 610–622; Raines Law

(New York), N. Am. Rev., 162 : 481–485 ; Gothenburg and South Carolina Systems, Forum, 17 : 103–113 ; 26 : 551–560 ; N. Am. Rev., 158 : 140–149 ; 513–519 ; Arena, 9 : 836–837 ; 841–844 ; N. Eng. Mag., 11 : 785–797 ; Outlook, 56 : 985–988 ; Drink Problem in New York City, Waring, Outlook, 60 : 436–440 ; No-license in Cambridge, N. Eng. Mag., 13 : 53–59.

CHAPTER XI

LABOR LEGISLATION

THE laws that fall under this designation are very similar in their general purpose to those through which the State exercises its police power. It will be convenient to consider these laws as grouped into several classes.

1. There are laws that relate to the age of workers and the hours of labor. Attention was early called to the necessity for labor legislation because of the employment of young children in factories and the long hours of service for women and children. State laws now quite generally prohibit the employment of these persons for more than ten hours a day, or sixty hours a week. The employment of children in factories and mercantile establishments is made illegal, though the age limit varies from ten to fourteen or sixteen years. Accompanying these laws are requirements that children be given a minimum number of months' schooling each year.

Labor of women and children.

There has been much agitation in favor of a legal eight-hour day for workmen. The employees of the National and of many State governments work under this rule. Many State legislatures have declared eight hours to be a normal working day; but freedom of contract is allowed in this matter, so that in those States most laborers work for the full ten hours. There are a few exceptions to this rule, however; in certain industries and kinds of employment that are considered especially

The eight-hour day.

dangerous or difficult, laws fix a maximum number of hours. In Wisconsin the eight-hour day is compulsory for women; but in Illinois, a similar law was declared unconstitutional on the ground that it interfered with freedom of contract. Sunday labor is prohibited in most States.

2. The second class of labor laws specify the conditions under which labor may be carried on. They regulate the manner in which factory buildings shall be constructed and ventilated; the lighting and sanitation of these buildings must conform to certain requirements. Under certain conditions, seats must be provided for employees. The hours for meals must be reasonable. Sweat-shops are prohibited. Steam boilers are inspected and engineers are examined. Machinery must be so placed and guarded that employees will not be compelled to work in dangerous situations. Mines, in particular, are subject to State laws intended to secure the safety of miners.

Safety and comfort of employees.

3. The relations of employers and employees, and of both to the public, form a very important but complicated subject of legislation. There are laws regulating the time for the payment of wages, and prohibiting the truck system. Other laws forbid blacklisting and boycotting. The liabilities of employers for damages, because of accidents in which employees suffer, are fixed in many States by legislation. Trades unions and their members have received legal protection in various ways; for instance, laws prevent the discharge of employees for the sole reason that they are members of these organizations. One of the most difficult subjects of legislation in this field is that relating to labor conflicts. Laws which undertake to control strikes and lock-outs are being supplemented by others calculated to prevent these labor wars. In about one-half the

Wages.

Trade unions.

Strikes.

States, boards of arbitration and conciliation have been established. These boards are empowered to offer their services to aid in the settlement of disputes between employers and employed, and to investigate and report facts concerning strikes. But nowhere in this country has the compulsory arbitration of labor disputes been made legal, and it is difficult to see how such a law could be administered. Arbitration.

When damage to property or to business interests has been threatened by strikes, courts have granted injunctions, and by this means the acts of strikers were controlled. Much opposition has arisen to this method of dealing with these cases; it is called "government by injunction." Injunctions.

The relations between workmen and their employers are determined primarily by the rules of "common law." This is that body of law "which originated in the common wisdom and experience of society, in time became an established custom, and has finally received judicial sanction and affirmance in the decision of the courts of last resort." * It is found in reported decisions of courts and in legal text-books of established authority. But the new conditions of modern industrial life have rendered necessary statute laws which modify and supplement the rules of the common law. The common law.

4. The enforcement of labor laws is a duty of State and local officers; but in nearly every State of the Union there have been created bureaus of statistics of labor having more or less complete powers over the administration of the laws under consideration. In some cases the powers are merely those of collecting statistical information and of inspection in the ordinary sense of that term; in these ways much valuable information concerning conditions of labor is made public. But the power of enforcing labor laws is often vested in these bureaus, or in special officers called factory inspectors, who devote their time to this matter. Labor bureaus.

* Robinson, Elementary Law, 2; Dole, Talks about Law, 8.

Industrial education.

5. Looking toward the prevention of evils and conflicts in the industrial world, we find the establishment, by city and State governments, of industrial and technical schools and the incorporation of manual training courses in the common schools. For with the increased intelligence and skill of workmen will come increased respect for their rights, and more reasonable settlement of their relations to capitalists.

It is the development of modern industry that has made necessary this mass of legislation upon so many different topics. In the exercise of these powers, the State wields, through governmental agencies, an immense economic influence. The economic functions of government become of increasing importance yearly; for in their exercise the State attempts, by the enactment of temporary devices or permanent policies, to solve the great social problems of to-day.

Supplementary Questions and References.

1. Find in the statutes of your State provisions regulating the employment of labor. Has your State an efficient system of factory inspection?

2. When were the first factory acts of England passed? Gardiner, History of England, 911, 927.

3. What value have the statistics that are collected by labor bureaus?

4. What has been accomplished in your State toward the peaceful settlement of labor disputes?

5. The use of injunctions in connection with labor troubles. Outlook, 55 : 164–166; 192–193; 56 : 390; Nation, 65 : 160–161; 256–257; Rev. of R's, 16 : 356; Arena, 20 : 194–206.

6. Why are the economic functions of government increasing?

7. Labor legislation. Stimson, Labor in its Relations to Law. By the same author, Handbook to the Labor Laws

of the United States; Wright, Practical Sociology, chapters 22–26; Wright, Industrial Evolution of the United States, chapters 22, 23; Stimson, Atl. Mo., 80: 605–619; Dole, Talks About Law, chapter 23; Labor Laws of the States, Second Special Report of the Commissioner of Labor, 1892 (Revised 1896); Inspection of Factories and Workshops in the United States, Bulletin of the Department of Labor, No. 12, September 1897; Protection of Workmen in their Employment, Bulletin of the Depart ment of Labor, No. 20, January 1900.

8. Should the United States follow the example of Germany and other European countries in adopting compulsory insurance for workmen? Fourth Special Report of the Commissioner of Labor, 1891.

PART II

THE NATIONAL GOVERNMENT

CHAPTER XII

STEPS LEADING TO UNION

Colonial relations.

A NOTABLE fact presents itself as we consider the relations of the colonies prior to the Revolutionary war. There was a general indifference towards union, and it was only by slow and arduous steps that union was finally accomplished. This may be partially accounted for, if it be recalled that the early settlements were usually found scattered along the coast, each with its own harbors and interior waterways. Lack of roads, together with the primitive methods of travel then in use, rendered extended inter-communication wellnigh impossible. Besides, each colony had its own separate government, and different religious beliefs and practices tended to produce distrust and dislike among the colonists. There were, however, some strong bonds of sympathy. Their language and institutions were mainly English, and they were interested in the development of liberal government. Again, a community of interests was created in the necessity for protection against their Indian, French, and Dutch foes. In general, it may be said that confederation was early brought about through the need for defence, but union has been the fruit of long years of transformation and assimilation.

The first definite step was taken toward union in 1639, when representatives of the Connecticut towns—Hartford, Windsor, and Wethersfield—met and adopted a constitution characterized by Mr. Bryce as "the oldest truly political constitution in America."

Union of the Connecticut towns, 1639.

In 1643 the four colonies—Massachusetts Bay, New Plymouth, Connecticut, and New Haven—entered into a league ("for mutual help and strength in all our future concernments") known by the name of the United Colonies of New England. This confederation was necessary, because the English government, then in the midst of the Puritan revolution, was unable to furnish the colonists protection against their Dutch, French, and Indian enemies. In the annual meetings of the commissioners, two being sent by each colony, questions pertaining to war, peace, and relations with the Indians were discussed. This central government possessed only advisory power over the colonies, and had no power whatever over the individual citizens. The confederation was finally dissolved in 1684.

The New England confederation.

During the intercolonial wars the colonists were in constant danger from attacks by the French and Indians. The meeting at New York in 1690 of commissioners from Massachusetts, Plymouth, Connecticut, and New York "to fix upon such methods as should be judged most suitable to provide for the general defence and security and for subduing the common enemy," was the first of about a dozen such intercolonial conferences. Through these meetings, and especially by the co-operation of the forces of the various colonies in the army and the navy, social and religious prejudices were weakened and the sentiment for union was stimulated. In 1697 William Penn presented to the Board of Trade a plan for the union of the colonies which, though not adopted, is of interest, for it contained the first use of the word

Conference between 1690 and 1754.

Penn's plan of union, 1697.

"Congress" in connection with American affairs. The plans presented for the fifty years following were largely fashioned after this model.

The Albany Congress, 1754.

The Lords of Trade, knowing that a general colonial war, caused by French aggression, was inevitable, directed that a Congress, consisting of delegates from all the colonies, should assemble at Albany for the purpose of making a treaty with the Iroquois Indians and considering other means of defence. The suggestion was made in America that the commissioners should also draw up some plan for colonial union. This Congress, consisting of twenty-five of the leading men from seven different colonies, was an important advance toward union. A treaty with the Indians was secured. The Congress then adopted unanimously the resolution that "A union of all the colonies is at present absolutely necessary for security and defence." A plan of union, drawn up by Benjamin Franklin and known as the Albany plan, was also adopted. This plan, which provided for the permanent federation of all the colonies, not only failed to secure the ratification of a single colony, but also met the disapproval of the English government. Franklin said: "The assemblies all thought there was too much prerogative, and in England it was thought to have too much of the democratic."

The Stamp Act Congress, 1765.

Stirred by the various acts of the English government and especially by the passage of the Stamp Act, the Massachusetts House of Representatives issued an invitation, to the other colonial assemblies, to send delegates to a general meeting. Nine colonies responded by sending twenty-eight men to the Congress which assembled in New York, October 7, 1765.* They were in session two weeks and during this time petitions to the

* Virginia, New Hampshire, Georgia, and North Carolina sympathized with the movement but did not send delegates.

English government and a declaration of rights were formulated. This declaration is of importance in that it sets forth for the first time the united views of the colonists relative to questions which were to form the basis for revolution. The Congress declared the rights of the colonists to be the same as those of natural born subjects of England. It is notable that here again representatives had assembled on the motion of the colonists themselves. An advanced position was taken by Christopher Gadsden of South Carolina, who asserted: "There ought to be no New England man, no New Yorker, known on the continent; but all of us Americans." During the following year the Stamp Act was repealed.

The policy of coercion was still continued by the English government, and finally the repressive acts of 1774 were passed. Again Massachusetts, June 17, 1774, under the leadership of Samuel Adams, called for a congress of all the colonies and hastened the meeting through its committee of correspondence. Delegates from all of the colonies, with the exception of Georgia, assembled at Philadelphia, September 5, 1774. In this Congress, without legal status, its representatives having been chosen ordinarily by irregular congresses and conventions, there were again some of the most influential men in America. Resolutions were passed approving the action of Massachusetts in her resistance to the measures of Parliament, and a Declaration of Rights was prepared. In this Declaration was asserted the right of exclusive legislation in the colonial legislatures, limited only by the negative of "their sovereign in all cases of taxation and internal polity." They insisted on the right of trial by jury, and protested against the keeping of a standing army in any colony without the consent of the legislature of that colony. Certain acts were also

The first Continental Congress, 1774.

enumerated which were to be revoked by Parliament before harmony could be restored.

The resolutions of the first Continental Congress had little influence on the English government, and other measures were quickly passed carrying out the policy of repression. Before the second Continental Congress assembled, the battle of Lexington had been fought and the American forces were then holding Boston in a state of blockade. This Congress convened in Philadelphia, May 10, 1775, and continued in session, with adjournments from time to time, until March 1, 1781.

The second Continental Congress, 1775.

All of the colonies were represented, and nearly all of the delegates had been members of the first Continental Congress. The members sat behind closed doors and were enjoined to keep all matters of discussion absolutely secret. It was determined that each State should have one vote and that final authority on all questions should rest with a majority of the States assembled in the Congress.

Organization of the Congress.

Like previous Congresses, this one was, at first, merely an advisory body. It was expected that all matters would be reported back to the States for instructions, but the crisis had come and the situation compelled Congress to exercise sovereign powers.

Authority of the Congress.

Congress at once took control of military affairs and called Washington to the command of the army which it created. It provided for a national currency; organized a general post-office; and threw open American ports to the ships of all nations. It furthered union and independence by the appointment of a committee to formulate the ideas on independence then prevalent; and of another committee to prepare the form of confederation to be entered into. Between May 10, 1775, and July 4, 1776, the change in sentiment was rapid. King George III. refused to return a formal answer to their

Powers exercised by Congress.

last petition and proclaimed the colonists "dangerous and ill-designing men." Heretofore, the colonists had striven for a union of thought and action, which they believed to be the best means to secure those rights which were everywhere the heritage of Englishmen. When the result of the last petition became known, October 31, 1775, there was no longer any hesitancy with regard to the course to be pursued. Henceforth, they were to gather additional inspiration as they strove to secure rights regarded as common to all mankind. These new views were embodied in the Declaration of Independence.

The Declaration of Independence.

Even before the adoption of the Declaration of Independence, Congress recommended, having been appealed to for advice by New Hampshire, South Carolina, and Virginia, that new forms of government should be established. By the year 1777 ten States had framed new constitutions.

The colonies made States.

The problem of the relations between the general government and the States was second in importance only to the problem of the winning of independence from England. The State legislatures were held in greater respect than was the Continental Congress. It became clear, then, to some of the leaders, that if union were to be preserved, it would be necessary to have a government more effective than a revolutionary assembly. As early as July 21, 1775, Franklin had seen the need and had presented to Congress a plan for "Perpetual Union." No action was taken by Congress, and it remained for Richard Henry Lee, the following year, to offer in connection with his resolution for independence another resolution for the drafting of the Articles of Confederation. On June 12th, the day on which the committee was appointed to draw up a Declaration of Independence, Congress also named a committee, con-

The Articles of Confederation.

sisting of one member from each colony, to prepare a form of confederation to be entered into between the colonies. The report of this committee was submitted one month later by its chairman, John Dickinson, of Pennsylvania. A year and five months, a most momentous period in the history of our country, was to elapse before the Articles, as amended, were adopted by Congress and submitted to the State legislatures for approval.* Three years and a half more elapsed before Maryland, the last State, ratified, March 1, 1781.

Nature of the government established.

The adoption of the Articles of Confederation marks one of the most important events in the history of the United States. While it must always be regarded as a weak instrument of government, we must not forget that the Continental Congress worked along entirely new lines, for never before had a confederation so extended as this been even proposed. That there should be a general desire for union no matter how weak the tie, was of great significance. Heretofore, there had existed the idea of union against England, but from now on questions of domestic importance were to be of chief interest.

Defects in the government.

The weaknesses in the government were mainly these: Congress might make the laws but could not enforce them. There was no separate executive to enforce and no judiciary to interpret the laws. No important resolution could be passed in Congress without the votes of nine States, and the Articles could not be amended except by the ratification of all the States. Congress acted on the States and not on individuals, but it had no power to coerce the States. "Its function was to advise, not to command."

The fatal lack of organization in the government early produced momentous results. While the war

* From July 11, 1776, to November 17, 1777.

continued, union for self-preservation was necessary; but when peace ensued, the principle of local self-government in the States became more manifest. Washington saw the trend of affairs, and in a circular letter to the governors of the several States, shortly before his resignation as commander of the army, expressed his views in the following words: "Unless the States will suffer Congress to exercise those prerogatives they are undoubtedly invested with by the Constitution, everything must very rapidly tend to anarchy and confusion. . . . Whatever measures have a tendency to dissolve the Union or contribute to violate or lessen the sovereign authority ought to be considered hostile to the liberty and independence of America, and the authors of them treated accordingly." Had this appeal been appreciated by the States, the condition of anarchy which followed would not have occurred. But the jealousy of the States for the central government continued to increase; the State interests became dominant, and that most dangerous period of our history, extending from 1783 to 1788, well called the "critical period," succeeded. It was apparent that the government under the Articles of Confederation was a failure and that the Nation was drifting rapidly toward anarchy and open rebellion. Fortunately in this darkest hour there came forward Washington, Franklin, Hamilton, Madison, and other leaders who were prepared, if need be, to make compromises, but who were determined to preserve the elements of union already secured.

Practical workings of the government.

SUPPLEMENTARY QUESTIONS AND REFERENCES.

1. *a.* Who were the Lords of Trade, and what was their attitude toward the colonies?
 b. Why was the spirit manifested by the colonial governors a cause for co-operation between the colonies?
 c. What were the two ideas of federation?
 d. Why was Federal union hopeless? Fiske, American Revolution, I, 1–6.

2. What were the chief provisions of the Connecticut constitution? Old South Leaflets, No. 8; Thwaites, The Colonies, 142, 143; Hart, American History Told by Contemporaries, I, 415–419.

3. *a.* Why were not the colonies of Rhode Island and Maine included in the New England confederacy? Fiske, Beginnings of New England, 155–158.
 b. Read the Articles of Confederation of the United Colonies of New England. American History Leaflets, No. 7.
 1. Reasons for "consotiation."
 2. In what way were the apportionments of men and expenses to be made?
 3. The numbers, qualifications, and authority of the commissioners?
 4. The significance of the provision relative to fugitives?
 c. Reasons for the dissolution of the league? Fiske, Beginnings of New England, 159.

4. For a summary of the intercolonial conferences see Frothingham, Rise of the Republic, 118–120; American History Leaflets, No. 14.

5. *a.* After reading the Albany Plan, give reasons for the statements made by Franklin. Old South Leaflets, No. 9.
 b. How were the members to be apportioned among the colonies?

c. Give a list of the powers of the central government under this plan. Did it possess full power to make laws?

6. *a.* What was the character of the other acts to which the colonists objected? Fiske, The American Revolution, I, 12–16.

b. State the provisions of the Stamp Act and points connected with its enactment. Frothingham, Rise of the Republic, 175, 176; American History Leaflets, No. 21.

c. How was the Stamp Act regarded in the different colonies as shown by the addresses made, the resolutions offered, and the acts of opposition? Fiske, The American Revolution, I, 16–20; 22–25; Hart, American History Told by Contemporaries, II, 395–411; Tyler, Patrick Henry (American Statesmen), chapters 5 and 6.

d. Why were not all of the colonies represented? Fiske, The American Revolution, I, 21.

e. Give the chief points connected with the debate on the repeal of the Stamp Act. Fiske, The American Revolution, I, 27, 28; Hosmer, Samuel Adams (American Statesmen), chapter 6.

7. What was the origin of the Committees of Correspondence and how did they aid in unification? Sloane, The French War and the Revolution, 161, 162; Hart, Formation of the Union, 57.

8. How were the delegates to the Second Continental Congress appointed? What was the character of this Congress? Hart, Formation of the Union, 73, 74; Fiske, The Critical Period of American History, 92, 93.

9. *a.* Which of the colonies took the first decisive action with reference to independence?

b. Was the author of the Declaration of Independence especially fitted for his task?

c. Could the same results have been attained in a different manner?

d. Analyze the Declaration of Independence and select from it the causes for the Revolution. See

also Fiske, The American Revolution, I, 172–197.

10. *a.* Why was the adoption of the Articles of Confederation so long delayed? Hart, American History Told by Contemporaries, II, 539–543; Fiske, The Critical Period of American History, 93–95; Walker, The Making of the Nation, 6; Hart, Formation of the Union, 93–95.

 b. Read the Articles of Confederation. Read the Articles of Confederation, Appendix AA, 374; American History Leaflets, No. 20.

 1. How was the Congress composed?
 2. The number necessary for a quorum?
 3. The powers of Congress?
 4. Powers of the separate States?

 c. Defects of the Confederation. The Federalist, Nos. 21 and 22; Hart, American History Told by Contemporaries, II, 591–603.

11. *a.* What was the attitude toward union during the period 1783–1788?

 b. Were there notable bonds of union even at this time? What other influences have increased this sentiment? Fiske, Critical Period of American History, 55–63; Walker, The Making of the Nation, 7, 8.

 c. Describe the character of the money of the period and its influence. Fiske, Critical Period of American History, 162–186.

CHAPTER XIII

THE CONSTITUTIONAL CONVENTION

Among the many difficulties referred to in the previous chapter, there were constant disputes between Virginia and Maryland relative to the navigation of the Potomac River and of the Chesapeake Bay. Finally, in March, 1785, three commissioners from these States, on the recommendation of Mr. Madison, met at Alexandria, Va., for the purpose of considering the difficulties. They soon adjourned to Mount Vernon. While there, Washington proposed that they include in their report the recommendation that there should also be a uniform system of duties and a uniform currency. When the report was under consideration by the Maryland legislature, it was suggested that Pennsylvania and Delaware should be invited to send commissioners to join with those from Virginia and Maryland every second year in considering their commercial relations. In January, 1786, the Virginia legislature agreed upon the resolution prepared by Madison to the effect that delegates be appointed from all thirteen States to consider the condition of the trade of the Confederation and, if possible, to provide for some uniform system for the regulation of commerce. It was agreed that the meeting should be held at Annapolis, September 11, 1786.

Events leading to the Constitutional Convention.

There were present at Annapolis, on the appointed day, commissioners from Virginia, Delaware, Pennsylvania, New Jersey, and New York. Commissioners from some of the other States were on their way, but Mary-

land, Georgia, South Carolina, and Connecticut had appointed none. Nothing permanent could be accomplished with so few States represented; but before adjourning they agreed to a resolution framed by Alexander Hamilton which proposed a convention to be composed of commissioners from all the States to meet at Philadelphia on the second Monday in May, 1787, for the purpose of amending the Articles of Confederation. Copies of this resolution were sent to all of the States and also to Congress. Not until delegates had been appointed by six States did Congress practically approve of the plan by recommending to the States a convention identical with the one already provided for by the Annapolis resolution. The remaining States, Rhode Island excepted, soon appointed delegates.

The meeting at Annapolis and its results.

The day fixed for the Convention was May 14th, but not until May 25, 1787, was there a quorum of delegates from seven States present at Philadelphia. The number of delegates to be sent by each State had not been specified; and in order that the States should have equal powers, one of the first standing rules adopted provided that the voting should be by States. Sixty-five delegates were appointed as members in this, one of the most memorable assemblies the world has ever known, but only fifty-five attended. Twenty-nine of the number were university men. With but few exceptions, the men who had been particularly prominent in the days of the Revolution were present. Among them were Washington, who was unanimously chosen President of the Convention, and Franklin, whose fame as diplomat and legislator was world-wide. Neither of these men took an active part in the debates, but their presence gave inspiration to the others and they had untold influence at critical times.

The Federal Convention, 1787.

On May 22d, while some of the delegates, in their fears

of displeasing the people, were recommending half-way measures, Washington gave expression to that sentiment which was to dominate in the future debates of the Convention. He said: "It is too probable no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and the honest can repair; the event is in the hand of God." Other signers of the Declaration of Independence present besides Franklin were Roger Sherman, of Connecticut; George Read, of Delaware; Elbridge Gerry, of Massachusetts; Robert Morris, of Pennsylvania; and Chancellor Wythe, of Virginia. Virginia also sent George Mason, Edmund Randolph, and James Madison; Massachusetts, Caleb Strong, Nathaniel Gorham, and Rufus King. Delaware sent John Dickinson,* who reported the Articles of Confederation to Congress. Pennsylvania, James Wilson, the great jurist, and Gouverneur Morris, "whose correctness of language" led him to be selected to prepare the final draft of the constitution; and Connecticut, Oliver Ellsworth, one of the greatest lawyers of the day, who afterward became Chief-Justice, and William S. Johnson, who became President of Columbia College. Among the other more notable members were Alexander Hamilton, of New York; Governor William Patterson, of New Jersey; Luther Martin, of Maryland; and the two Pinckneys and John Rutledge, from South Carolina.

Delegates in attendance.

John Adams and Thomas Jefferson were then in Europe, and Samuel Adams, Patrick Henry, and Richard Henry Lee disapproved of the Convention.

Notable men not present.

The Convention lasted from May 25 to September 17, 1787. The members sat behind closed doors, and the charge of secrecy with regard to the proceedings was placed on them. The official jour-

*John Dickinson removed from Pennsylvania to Delaware.

Our knowledge of the Convention.

nal was entrusted to Washington, who deposited it in the public archives in 1796. It was published in 1819 as a part of volume one of Elliot's Debates. We can gather little from the journal with regard to what was actually said by the members, but fortunately Mr. Madison, with an appreciation of the consequences of the Convention, decided to give as nearly as possible an exact report of the proceedings. He wrote: "Nor was I unaware of the value of such a contribution to the fund of materials for the history of a Constitution on which would be staked the happiness of a people great even in its infancy, and possibly the cause of liberty throughout the world." These notes were purchased by the government from Mrs. Madison in 1837 for $30,000, and published for the first time in 1839.

Madison's Journal. 50.

The magnitude of the labor of the Constitutional Convention can be understood only as we read in Madison's Journal the report of the discussions. The actual work of the Convention was begun on May 30th, when it went into committee of the whole for the purpose of considering a series of fifteen resolutions which had been presented the day before by Governor Edmund Randolph, of Virginia. The plan of government set forth in them, known as the Virginia Plan, was largely the work of Mr. Madison. It was considered until June 13th, and after certain amendments had been adopted was reported back favorably to the Convention. Among the most important measures finally submitted were provisions that a National government should be formed possessing supreme legislative, executive, and judicial powers; that the legislative power should be vested in a Congress of two separate houses—a House of Delegates to be chosen by the people of the States, and a Senate to be elected by the House of Delegates; that the representation in both houses should be based on population or on contributions to the support of the government; and that the executive should be chosen by both houses of Congress, and the judiciary by the

Plans and compromises.

The Virginia Plan.

Senate. This scheme had been fiercely attacked in the committee by the delegates from the smaller States, who desired to maintain equality of State representation. It was clear that if the plan proposed were adopted the government would pass into the hands of the large States.

Frustrated in their desires, the small States agreed upon a series of eleven resolutions, known as the New Jersey Plan, which were presented by Mr. Patterson of that State on June 15th. They provided for a continuance of the government under the Articles of Confederation, which were to be revised in such a manner as to give to Congress the power to regulate commerce, to raise revenue, and to coerce the States. This plan had been agreed upon among the members from Connecticut, New York, New Jersey, Delaware, and Luther Martin, of Maryland. The New Hampshire delegates had not yet arrived. Connecticut and New York were against a departure from the principle of confederation, wishing rather to add a few new powers to Congress than to substitute a National government. "New Jersey and Delaware were opposed to a National government because its patrons considered a proportional representation of the States as the basis for it."

The New Jersey Plan.

Madison Papers, II. 863.

On the same day that Governor Randolph presented the Virginia Plan, Charles Pinckney, of South Carolina, presented a series of resolutions founded on similar principles. They were referred for debate at the same time as those of Mr. Randolph, but received little attention.

The Pinckney resolutions

On June 18, in the midst of the crisis as to whether a national or a federal government should be established, Mr. Hamilton made his celebrated speech in opposition to both plans. Sometimes wrongly called Hamilton's Plan, it was probably intended only to give a more correct view of his ideas and to outline the amendments he proposed to offer at suitable times in the discussion.

Hamilton's views.

For three days the contest waxed hot over the merits and defects of these plans. It was asserted by those who opposed the Virginia Plan that it would destroy the sovereignty of the States. They believed also that they did not possess the power to create such a government. Said Mr. Patterson: "I came here not to speak my own sentiments but the sentiments of those who sent me. Our object is not such a government as may be best in itself, but such a one as our constituents have authorized us to prepare and as they will approve." To this sentiment Mr. Randolph replied: "When the salvation of the Republic is at stake, it would be treason not to propose what we find necessary." Finally the arguments of Madison, Wilson, and King triumphed and the Virginia Plan was again commended to the Convention. The debates became even more heated than before, as resolution after resolution was taken up. The critical time came when the clause which provided for proportional representation was reached. Mr. Luther Martin contended with great vehemence, "That the States, being equal, cannot treat or confederate so as to give up an equality of votes without giving up their liberty; that the propositions on the table are a system of slavery for ten States; that as Virginia, Massachusetts, and Pennsylvania have forty-two ninetieths of the votes, they can do as they please, without a miraculous union of the other ten." Others claimed they would rather submit to a foreign power than be deprived of equality of suffrage in both branches of the legislature. The Convention was on the verge of dissolution when Mr. Johnson, of Connecticut, brought forward a compromise based on the different methods by which members of the two houses were chosen in that State. This provided that the House of Representatives should be composed of mem-

The Virginia *vs.* the New Jersey Plan.

The Connecticut compromise.

bers elected on the basis of population, while, in the Senate, large and small States were to be equally represented. Finally, after eleven more days of discussion, this, the first great compromise, was adopted.

The adoption of the compromise was virtually a victory for the Virginia Plan. When the smaller States were given an equal vote in the Senate, they no longer feared that they would be absorbed, so they united with the larger States in giving yet greater powers to the general government.

Votes on this compromise.

Connecticut, New Jersey, Delaware, Maryland, and North Carolina voted for the compromise. Pennsylvania, Virginia, South Carolina, and Georgia were opposed. The vote of Massachusetts was divided and lost. Yates and Lansing of New York left the Convention the day the compromise was favorably reported by the committee of detail, and Hamilton also went home for a short time.

The second, or three-fifths compromise.

How the number of Representatives was to be determined was another serious problem. It was agreed that all free persons should be counted. There was little objection offered to counting those persons bound to service for a term of years and to the excluding of Indians not taxed. The chief debate arose over the question whether the slaves should be included in the enumeration. The South Carolina delegates maintained that slaves were a part of the population, and as such should be counted. Objections were made that slaves were not represented in the legislatures of that and other States, and, in consequence, ought not to be represented in the National legislature; also, that they were regarded in those States merely as property, and as such should not be represented. There was grave danger that the work of the Convention would fail at this point. Finally, Mr. Wilson brought for-

ward a compromise to the effect that slaves were to be represented as "other persons," five of whom should be equal to three free persons. Another clause was inserted for the purpose of reconciling the non-slaveholding States to this provision: that "direct taxes should be apportioned in the same manner as Representatives."

The third great compromise grew out of the question of the foreign slave trade. South Carolina and Georgia were anxious that this should be continued. This was opposed by the Northern States and by some of the Southern. On the other hand, New England members especially, because of their interest in commerce, feared the results which would ensue if each State was allowed to be independent in commercial matters. They wanted the general government to have complete control of commerce. But this was resisted by some of the Southern delegates, who thought that, by some act of legislation, the trade in slaves might be prohibited. Finally a compromise was agreed upon which gave Congress power over commerce but forbade any act which might prohibit the importation of slaves prior to 1808. It was also agreed that a tax of ten dollars each might be laid on all slaves imported.

The third compromise.

While the Constitution may be said to be made up of a series of compromises, these three settled, for the time, the questions which were most vital, and rendered the further work of the Convention possible. It has been sometimes asserted that there should have been no half-way measures on slavery; that had the question of slavery been settled at that time there need not have been a Civil War. But, as already noted, without compromises the work of the Convention must have failed, and political anarchy would have been inevitable, the results of which would have been even more disastrous than the

Influence of the compromises.

effects of that terrible period of warfare between 1861 and 1865.

On September 10th, a draft of the Constitution was submitted to a committee of five for revision. The question arose as to the advisability of calling another convention, but this received the negative vote of every State. A second convention proposed.

The final draft of the Constitution, prepared by Gouverneur Morris, was then submitted to the delegates for their signatures. Thirty-nine members, representing twelve States, affixed their names to the document, and on September 17th, the Convention adjourned. * While the last signatures were being written, Franklin said to those standing near him as he called attention to a sun blazoned on the back of the President's chair: "I have, often and often, in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President, without being able to tell whether it was rising or setting; but now, at length, I have the happiness to know that it is a rising and not a setting sun." Signers of the Constitution. Madison's Journal, 763.

The Constitution was first submitted to Congress September 20th, and the following day it became known to the people through the New York daily papers. For eight days the document was attacked by its opponents in Congress, but finally it was transmitted to the State legislatures to be sent by them to State conventions chosen by the people. This process of ratification was provided for by Article VII of the Constitution, as follows: Ratification of the Constitution.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same. Article VII.

The period included between September 28, 1787, when Congress unanimously resolved to transmit the

* See Appendix A.

Constitution to the State legislatures, and June 21, 1788, the date when it had been ratified by the necessary nine States,* was one of the most critical in our history. Everywhere the Constitution was violently attacked. Political parties in a truly national sense were formed for the first time. Those who supported the Constitution called themselves Federalists, and those opposed anti-Federalists. In general, the opponents of the Constitution desired more extensive powers for the States and were to be found largely among the rural population and debtor classes. Its advocates were the men of wealth and the inhabitants of the manufacturing and commercial centres. Among the leaders who ably defended the views of the opposition were Richard Henry Lee, Elbridge Gerry, George Clinton, and Patrick Henry. It was urged that the President would become a despot, the House of Representatives a corporate tyrant, and the Senate an oligarchy; that equality of representation in the Senate was an injustice to the large States; and that there was no Bill of Rights. The views of the Federalists are well presented in a letter written by Washington, on his return from the Convention, to Patrick Henry, in which he says: "I wish the Constitution which is offered had been more perfect; but it is the best that could be obtained at this time, and a door is open for amendments hereafter. The political concerns of this country are suspended by a thread. The Convention has been looked up to by the reflecting part of the community with a solicitude which is hardly to be conceived, and if nothing had been agreed on by that body, anarchy would soon have ensued, the seeds being deeply sown in every soil."

Arguments for and against the Constitution.

Political letters, tracts, and pamphlets were common. The most noted articles in opposition were the "Letters from the Federal Farmer," prepared for the press of the

* The State legislatures submitted the constitution to State Conventions.

country by Richard Henry Lee. No influence was more noteworthy in bringing about ratification than the series of political essays afterward collected under the name of "The Federalist." They present the cause with such logic that to-day they are considered the best commentary on the Constitution ever written. Alexander Hamilton inaugurated the plan and wrote 51 of the 85 numbers. James Madison wrote 29 and John Jay 5.

The Federalist.

December 6, 1787, the ratification of the Constitution was secured in Delaware, the first State, without a dissenting vote, and Pennsylvania, New Jersey, Georgia, and Connecticut quickly followed. Much depended on the action of the Massachusetts convention. After prolonged debate the delegates were induced to accept the proposition that amendments might be made which would take the place of a Bill of Rights, and adopted the Constitution by a vote of 187 to 168. The ratification of Maryland and South Carolina soon followed, and the ninth State was secured by the ratification of New Hampshire, June 21, 1788. Virginia ratified, June 25th, with a vote of 89 in favor and 79 opposed, and New York, July 26th, with 30 affirmative votes and 27 negative. It was not until November 21, 1789, that North Carolina voted to accept the Constitution, while Rhode Island held out until May 29, 1790.

The Constitution in the State conventions.

When the ratification of the ninth State had been secured, Congress appointed a special committee to frame an act for putting the Constitution into operation. It was enacted that the first Wednesday in January should be the day for appointing electors; that the electors should cast their votes for President on the first Wednesday in February, and that on the first Wednesday of March the new government should go into operation. It was not until April 1st that a quorum was

The new government put into operation.

secured in the House of Representatives, and in the Senate not until April 6th. The electoral votes * were counted in the presence of the two houses on April 6th. The inauguration of President Washington did not take place, however, until April 30th.

Origin of the Constitution.

Having considered some of the problems of the Convention and those connected with the adoption of the Constitution, we next inquire as to the origin of this epoch-making document. The often-quoted words of Mr. Gladstone, which have no doubt been misinterpreted, have been used to strengthen the view that the Constitution was the creation of the Convention. He said: "As the British Constitution is the most subtle organism which has proceeded from progressive history, so the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man." Was our Constitution largely a "version of the English Constitution," as Sir Henry Maine called it? An analysis of the Constitution shows that there are some provisions which are new and that English precedent has had an influence, but that the main features were derived from the constitutions of the States. Many of the delegates of the Constitutional Convention had helped to frame these State constitutions, and all were familiar with their practical workings. Thus, the Convention was "led astray by no theories of what might be good, but clave closely to what experience had demonstrated to be good." † The following familiar statement is an excellent summary: "Nearly every provision of the Federal Constitution that has worked well is one borrowed from or suggested by some State constitution; nearly every provision that has worked badly is

* New York did not choose electors, and North Carolina and Rhode Island had not ratified the Constitution.

† James Russell Lowell, address of April 13, 1888.

one which the Convention, for want of a precedent, was obliged to devise for itself."

With the exceptions of the constitutions of Pennsylvania and of Georgia, all of the State constitutions, in 1787, provided for legislatures of two houses. The term "Senate" was used to designate the upper house in Maryland, Massachusetts, New York, North Carolina, New Hampshire, South Carolina, and Virginia; and "House of Representatives" was commonly used for the lower house. The constitution of Delaware provided for the election of one-third of the senators every two years, and the New York constitution made provision for taking a census once in seven years for the purpose of apportioning the Representatives. As already noted, Connecticut furnished the example for equal representation of the States in the Senate and for proportional representation in the House of Representatives. In nearly all of the State constitutions, each House was given the power to decide the election of its members, make rules, publish a journal, and adjourn from day to day. "All bills for raising revenue must originate in the House" is found almost word for word in the Massachusetts and New Hampshire constitutions. The powers of President and Vice-President resemble closely those granted the governor and lieutenant-governor. Other important provisions were, no doubt, derived from the State constitutions, such as the process of impeachment, the veto power, the first ten amendments, and the President's message.

Influence of the State constitutions. New Princeton Review, IV, 175.

Professor Alexander Johnston, in the article the substance of which has just been given, states that while a judicial system existed as a part of the State governments, the "great achievement of the Convention was the erection of the judiciary into a position as a co-ordinate branch of the government." He says also that "the process of electing the President is almost the only feature not a natural growth."

New features of the Constitution.

It was evidently the intention of the framers of the Constitution to found a government deriving its authority from the people rather than from the States. The purposes for which this was done are set forth in the following enacting clause, commonly called the preamble:

Authority and purposes of the Constitution.

"*We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic*

The preamble.

tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

This clause was attacked vigorously by the opponents of the Constitution, and especially in the Virginia and the North Carolina conventions. Said Patrick Henry: "And here I would make this inquiry of those worthy characters who composed a part of the late Federal Convention. . . . I have the highest veneration for those gentlemen; but sir, give me leave to demand, what right had they to say We the people? . . . Who authorized them to speak the language of, We the people, instead of, We the States? If the States be not the agents of this compact, it must be one great, consolidated, National government, of the people of all the States." It was argued, on the other hand, by Randolph, Madison, and others, that the government under the Articles of Confederation was a failure and that the only safe course to pursue was to have a government emanating from the people instead of from the States, if the union of the States and the preservation of the liberties of the people were to be preserved.

Supplementary Questions and References.

1. Why was Annapolis selected as the place of meeting Madison, Journal of the Constitutional Convention, 37.

2. For an account of Hamilton's resolution and its origin, see Madison's Journal, 37–41.

3. Was the calling of a convention to remodel the articles a new idea? Madison's Journal, 43–45.

4. Why did Congress, at first, object to the Hamilton resolution? Fiske, Critical Period of American History, 217; Bancroft, History of the United States, VI, 196.

5. What events led Congress to change its views? Madison's Journal, 45–48; Fiske, Critical Period, 218–222; Schouler, History of the United States, I, 34–39; Bancroft, History of the United States, VI, 199–200.

6. State the problems connected with the appointment of delegates in some of the States. McMaster, History of the People of the United States, I, 390–399.

7. *a.* For an account of the members of the Convention, see Hart, American History told by Contemporaries, III, 205–211.

b. For the contributions of the individuals and the classes of delegates, see Walker, The Making of the Nation, 23–27; Fiske, Critical Period, 224–229; McMaster, I, 418–423.

8. Why did not Hamilton take a prominent part in the debate before June 18th? Give the chief points in his address of that date. Madison's Journal, 175–187.

9. What were the significant points made by Madison in his speech of June 19th? Madison's Journal, 187–196.

10. Why did the New York delegates leave the Convention? Bancroft, VI, 259–260; Fiske, Critical Period, 254.

11. What was the attitude of the various members of the Convention toward the Constitution? Who refused to sign? Their reasons? Bancroft, VI, 364–367.

12. Discuss the peculiar conditions in Massachusetts. Give the arguments presented. Bancroft, VI, 395; Schouler, I, 59,60; Walker, 56–57; Fiske, Critical Period, 316–331.

13. How was the Constitution regarded in Virginia? Bancroft, VI, 426–436; Walker, 58, 60; Schouler, I, 70–75; Fiske, Critical Period, 334–338.

14. In what way did Virginia influence New York? What was the attitude of the New York Convention toward the Constitution? Bancroft, VI, 455–460; Walker, 60, 61; Schouler, I, 66, 67; Fiske, Critical Period, 340–345.

15. *a.* What objections were offered against the Constitution in North Carolina? Hart, American History told by Contemporaries, III, 251–254.

b. What would have been the status of North Carolina and of Rhode Island if they had not ratified? Walker, 73, 74; Hart, Formation of the Union, 132, 133.

16. For a good account of the first Presidential election and the inauguration of the new government, see Fiske, Critical Period, 346–350; Schouler, I, 74–86.

CHAPTER XIV

ORGANIZATION OF THE LEGISLATIVE DEPARTMENT

All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives. Article I, section 1.

In the Constitutional Convention Pennsylvania was the only State which objected to the resolution that a legislative body consisting of two houses should be formed. The single house of the Confederation was regarded as a failure. It was believed that one house would form a check upon the other, and that there would thus be less danger of hasty and oppressive legislation. As already noted, the bi-cameral system existed in all of the States, Pennsylvania and Georgia excepted, and the names Senate and House of Representatives were also in common usage. A Congress of two houses.

It is somewhat difficult for Americans to remember that members of Congress, although elected by the people or by the State legislatures, are not, in consequence, compelled to receive instructions from their constituents. Each member is supposed to use his own best judgment on any question, and, like a member of the English House of Commons, ask : "What is for the good of the Nation?" Personal views are frequently sacrificed, however, for party interests. Responsibility of members of Congress.

Judge Cooley says on this question :

"Their own immediate constituents have no more right than the rest of the Nation to address them through the press, to appeal to them by petition, or to have their local interests considered by them in legislation. They bring with them their knowledge of

local wants, sentiments, and opinions, and may enlighten Congress respecting these and thereby aid all members to act wisely in matters which affect the whole country; but the moral obligation to consider the interest of one part of the country as much as that of another, and to legislate with a view to the best interests of all, is obligatory upon every member, and no one can be relieved from this obligation by instructions from any source." *

Section 2, clause 1. Term of members and qualifications of electors.

The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

A Congress.

Members of the House of Representatives are chosen for a term of two years, which period also determines the length of a Congress. This election is held, in all but three of the States,† on the Tuesday after the first Monday in November of even-numbered years, and the term begins legally on March 4th succeeding the time of the election.‡ Except in the case of a special session, the term does not really begin until the first Monday of the following December, thirteen months after the election.

Representatives elected by the people.

When the Constitution was framed, some of the State constitutions required a higher qualification in voters for the upper house of their legislatures than in voters for the lower house. With the object of making the House of Representatives the more popular branch, it was decided to grant the right of voting for a Representative to any person who might be privileged to vote for a member of the lower house of the legislature of his State. The one limitation upon the freedom

* Cooley, Principles of Constitutional Law, 41, 42.

† Oregon holds its election on the first Monday in June; Vermont on the first Tuesday in September; and Maine on the second Monday in September.

‡ The first Congress extended legally from March 4, 1789, to March 4, 1791.

of a State to determine what these qualifications are, is given in Amendment XV:

Amendment XV.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

This amendment was proposed by Congress in February, 1869, and was declared in force March 30, 1870. It was intended to grant more complete political rights to the negroes recently declared, by Amendment XIV, to be citizens.

Section 2, clause 2. Qualifications of Representatives.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not when elected be an inhabitant of that State in which he shall be chosen.

A great diversity of qualifications for members of the State legislatures existed in the various State constitutions. With such differences of opinion, it was agreed to make the positive qualifications for members of the National legislature few and simple. They pertain to age, citizenship, and inhabitancy, and the opinion prevails that the States may not add others. It has been the belief in the United States that an inhabitant of a State has a deeper concern for the interests and represents the people of his State more completely than a stranger. Hence, a Representative is not only required to be an inhabitant of the State, but custom has decreed that he must also be an actual resident of the district which he represents.

May the House refuse to admit a person duly elected and possessing the constitutional qualifications? This question arose in the 56th Congress in the case of Brigham Roberts, of Utah. As the evidence seemed to indicate that he was living in polygamy, thus violating State and National law, he was excluded.

Section 2, Amendment XIV, which became a part of the Constitution July 28, 1868, contains the rule of apportionment which is now in operation.

It declares that:

Apportionment of Representatives.

Amendment XIV, Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

When the amendment was proposed, the negroes had been granted the right of suffrage in only a few States, and Congress believed that rather than have the number of their Representatives reduced the other States would also be willing to grant them complete political rights. Tennessee was the only Southern State which ratified the amendment, but since Amendment XV became a part of the Constitution before the next apportionment of Representatives was made, this section was not put into practical operation. Each State may still determine for itself who has the right to vote within its limits.* Some of the States require a property qualification, and others, as Connecticut, Massachusetts, North Carolina, and Mississippi, require an educational qualification for voters. In Louisiana and South Carolina the

* See p. 48.

voter must either be able to read and write or possess property valued at three hundred dollars. It is claimed that the object in making these recent amendments to the constitutions of some of the States has been to curtail the negro vote rather than to exclude all illiterate voters. Thus, the North Carolina and Louisiana constitutions provide that "no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any State in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications prescribed." It is estimated that some 500,000 negroes will be disfranchised by these and similar constitutional amendments, and the question has arisen, should not section 2 of Amendment XIV be enforced?

The original method of apportionment was as follows:

Article I, section 2, clause 3. Original method of apportionment.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsyl-

vania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The three-fifths rule was rendered void by the adoption of Amendment XIII, which abolished slavery. There were then no longer the "other persons." That part of the clause providing for the laying of direct taxes is still in force. Really the Southern States were favored. In practical operation, while their direct taxes were increased, these were imposed only on five occasions, and the States of the South secured a large increase of Representatives. The Indians "not taxed" doubtless refers to those Indians who still maintain their tribal relations or live on the reservations. Their number, according to the census of 1900, was 134,158.

The Census.

A careful enumeration of the population of the United States had not been made in 1787. In order to carry out this provision of the Constitution, the first census was taken in 1790 and there has been one every ten years since that time. The taking of the census and the compilation and publication of the statistics connected with it are under the supervision of the Director of the Census. The four principal reports in the twelfth census are those on population,* mortality, manufactures, and agriculture. Work on this census was begun June 1, 1900, and these reports were issued by July 1, 1902. This work previously required from seven to nine years. The work was greatly aided by the provision of a building to be used for this purpose exclusively, the first in the history of this or of any other nation. Over 50,000 enumerators, 2,500 clerks, and 2,000 special agents were required to take the twelfth census, and the cost was some $12,000,000. The taking of the census will

* This shows the total population of the United States to be 76,303,387, which is an increase of 21 per cent. in ten years.—Census Bulletin, No. 65, June, 1901.

in the future be more economical and efficient, because of the establishment of the permanent census bureau by an act of Congress in 1902.

The ratio of representation.

According to the original method of apportionment, the number of Representatives was not to exceed one for every 30,000 people, and the House contained 65 members. Various methods were used in ascertaining the ratio of representation after each census until 1870, when the present system was employed for the first time. We may understand this method through a consideration of the apportionment made in 1891, which determined the number of Representatives prior to March 4, 1903. The total population of the United States in 1890 was 62,622,250. From this number a committee of the House of Representatives subtracted the population of the District of Columbia and of the territories, leaving 61,908,906. This number was then divided by 332, the number of members in the House of Representatives during the preceding decade, and by the numbers successively up to 375. The population of each of the several States was, at the same time, divided by the resulting quotients. After the various trials, a number was found which would secure each State against any *loss* in its membership, and would in no case leave a *major* fraction unrepresented. Such a number was found to be 356, and it gave a ratio of 173,901. The number of members according to an even division of the total population, after the subtraction of the population of the Territories, by 173,901 would have been 339. The 17 additional members were secured by giving another member to each of the States having a major fraction unrepresented.

Members from new States.

The Representatives of States coming into the Union after the apportionment is made are always additional to the number provided for by law. Thus Utah was admitted in 1896, and the House, after that date, contained 357 Representatives.

Apportionment of 1901.

The House of Representatives, since March 4, 1903, according to the reapportionment act of January 12, 1901, contains 386 members as a minimum, the ratio being one Representative to 194,182 of the population. An effort was made to keep the number at 357, but no ratio could be found which would enable this to be done

without taking from some of the States one or more of their present Representatives. Arkansas, California, Colorado, Connecticut, Florida, Louisiana, Massachusetts, Mississippi, Missouri, North Carolina, North Dakota, Washington, West Virginia, and Wisconsin gained one Representative each; Minnesota, New Jersey, and Pennsylvania gained two each; and Illinois, New York, and Texas each gained three.

The number of members in the English House of Commons is 670; in the French Chamber of Deputies, 584; and in the German Reichstag, 396.

One Representative for each State.

The Constitution provides that each State shall have at least one Representative. Otherwise the States of Delaware, Idaho, Nevada, and Wyoming, each having a smaller population than the ratio adopted in 1901, would not be represented.

Territorial delegates.

The organized Territories are each entitled to send to the House of Representatives a delegate, who is allowed to speak on questions affecting his territory, but may not vote.

Section 2, clause 4.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

Vacancies.

When a vacancy occurs in the representation from any State on account of death, expulsion, or for other cause, it is made the duty of the Governor of the State in which the vacancy exists to call for a special election in that district to choose a Representative for the remainder of the term.

Section 2, clause 5.

The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

The Speaker is always a member of the House.* The other officers are the Clerk, Sergeant-at-arms, Door-

* For an account of the Speaker and his power in legislation, see pp. 175–177.

keeper, Postmaster, and Chaplain, none of whom is a member of the House. The Clerk calls the House to order at the first meeting of each Congress, and acts as the presiding officer until a Speaker is elected. He keeps the record of all questions of order that arise, certifies to the passage of bills, and has charge of the printing of the House Journal. The Sergeant-at-arms sees that good order is preserved.

Officers of the House.

The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years; and each Senator shall have one vote.

Section 3, clause 1.

This clause constitutes a part of the celebrated compromise between the large and the small States. There was also great diversity of opinion with regard to the number of members in the Senate and their apportionment among the several States. After equality of representation in this body was decided upon, there still remained the question as to the number from each State. Were there to be three or two? Finally two, the smallest number of Representatives to which a State was entitled under the Confederation, was adopted.* Unlike the delegates in the Continental Congress, the Senators do not vote by States. The two Senators from a State may and often do vote on opposite sides of a question. Other questions arose such as: Were the Senators to be chosen by the legislature of each State; by the people of the States; or by the House of Representatives either directly or from candidates nominated by the State legislatures? The reasons for the unanimous adoption of the first plan seems to have been that it would connect the State governments more closely with the National government, and that the powers of the States would not be unduly encroached upon by the

Number, election, and term of office of Senators.

* The Senate now contains ninety members; the English House of Lords 560, and the French Senate 300.

general government. Alexander Hamilton was in favor of choosing Senators for life or during good behavior. Terms of nine years, of seven years, of six years, of five years, of four years, and of three years were also proposed. Six years was thought to be most satisfactory, for it would secure permanence of governmental policy and responsibility in the Senators, and at the same time guard against the dangers of a life tenure in which desirable changes would be too much resisted.

The modifications introduced by the next clause seem to have been intended to provide against any permanent combination among the members.

Section 3, clause 2. Classes of Senators.

Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one-third may be chosen every second year, and if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

According to this provision, at the first session of the first Congress, the Senators were divided into three classes. Senators from the same State are always placed in separate classes, and the Senators from a new State are assigned in such a manner as to preserve the classification. The classes they are to enter is determined between them by lot drawn in the presence of the Senate. Thus, the Senators from Utah were assigned to the two and the four year classes, and neither of them served the full term of six years.

A Senator appointed by the Governor of a State during the recess of the State legislature holds the office

until the next meeting of the legislature, or, in case that body fails to elect his successor, until the end of the session of the legislature.

If, after a Senator's term expires, the legislature fails to elect his successor, the question arises, May the Governor fill the vacancy by appointment? In several instances the Senate has decided against this procedure, and the decision in another case in April, 1900, would seem to indicate that it proposes to carry out the precedent.

If the legislature does not elect a Senator.

The State legislature of Pennsylvania, after seventy-nine ballots, failed to elect a Senator. Although the vacancy had not occurred during the recess of the State legislature, Matthew S. Quay, one of the candidates, was appointed Senator by the Governor. The Senate decided by a vote of 33 to 32 that Mr. Quay should not be seated.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State from which he shall be chosen.

Section 3, clause 3. Qualifications of Senators.

After calling attention to the differences in qualifications between Representatives and Senators, the "Federalist" says: "The propriety of these distinctions is explained by the nature of the senatorial trust, which, requiring greater extent of information and stability of character, requires at the same time, that the Senator should have reached a period of life most likely to supply these advantages; and which, participating immediately in transactions with foreign nations, ought to be exercised by none, who are not thoroughly weaned from the prepossessions and habits incident to foreign birth and education." Albert Gallatin, of Pennsylvania, elected to the Senate in 1798, and James Shields, of Illinois, elected in 1849, were declared to be disqualified because of inadequate citizenship. The Senate has always been composed of men who were older than the Representatives, and, on the whole, possessed of greater dignity

and learning, so that the Senate has a reputation second to that of no other legislative body in the world. Notwithstanding its reputation, the presence of numerous millionaires in the Senate in recent years has caused unfavorable comment. The Senate is also by tradition more conservative in action than the House, but on several occasions it has seemed to be the more radical body. For these reasons, the question is often asked, "Is the Senate degenerating?" Such a question is always in order in a republic concerning any institution or office.

Section 3, clause 4. President of the Senate.

The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

Section 3, clause 5.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

Other officers of the Senate.

The officers of the Senate are President, Secretary, Chief Clerk, Sergeant-at-arms, Chaplain, Postmaster, Librarian, and Doorkeeper, none of whom is a member of the Senate. The Vice-President of the United States is President of the Senate, but has no vote "unless they are equally divided." He cannot take part in the debates nor appoint the Senate committees. These committees, as well as the other officers, are chosen by the Senate. Their duties are similar to those of the corresponding positions in the House.

The President *pro tempore*.

It is desirable, in the absence of the Vice-President, that the Senate shall have a presiding officer, and so at the opening of the session that body chooses from its own members a President *pro tempore*. He may vote on any question, but cannot cast the deciding vote in case of a tie.

The Vice-President takes the oath of office when he is

inaugurated. On the first day of the session he administers the oath of office to the new Senators, who swear to support the Constitution and the laws of the United States.

Oath of office.

The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators.

Section 4, clause 1. Power of Congress over the elections of Senators and Representatives.

The reasons for delegating to Congress the privilege of exercising absolute power relative to the regulation of elections, is stated by Story as follows: "Nothing can be more evident than that an exclusive power in the State legislatures to regulate elections for the National government would leave the existence of the Union entirely at their mercy. They could at any time annihilate it by neglecting to provide for the choice of persons to administer its affairs."

Story, On the Constitution, I, 817.

Congress did not exercise its authority in the election of Senators prior to 1866. Many disturbances had arisen between the houses of the legislatures over the mode of election, and an act of that year provided for the present uniform system as follows: The legislature chosen next before the expiration of the term of a Senator shall proceed to elect his successor on the second Tuesday after its organization. On that day each house must vote separately by a *viva voce* vote and enter the result on its journal. The two houses are required to meet in joint assembly at 12 M. the following day, when the results are read. If the same person has received a majority of the votes in both houses, he is elected. If no person have such majority, the joint assembly must take a *viva voce* vote and the person receiving a majority of such votes is elected, providing a majority of all the members elected to both houses are present and voting.

Election of Senators.

Should there still be no election, the joint assembly must meet at noon on each succeeding day and take at least one vote until a Senator shall have been chosen. The procedure is the same in the case of a vacancy which has occurred before the legislature has assembled. When the vacancy happens during the session of the legislature, it must proceed in the same way the second Tuesday after receiving notice of the vacancy. The Governor of the State is required to certify the election, under the seal of the State, to the President of the Senate of the United States. This certificate must also be countersigned by the Secretary of State of that State.

In 1901 the members of the Nebraska legislature voted for three months before they were able to elect a United States Senator. There were Senatorial deadlocks also in the legislatures of Montana, Oregon, and Delaware, those in the first two States being broken in the last hours of the sessions. The deadlock was maintained in Delaware until the legislature adjourned, and this State was left with no representative in the Senate. For a like reason Delaware had only one Senator for the four years previous to this time. Charges were made in some of the States that bribes were offered to individual members of the legislatures. Because of these and other abuses the question of electing Senators by popular vote has been considerably agitated in recent years, and twenty-seven of the State legislatures have gone on record in favor of the reform.

A resolution providing for an amendment to the Constitution which would secure this result was passed by the House in the Fifty-fourth Congress but failed in the Senate. It again passed the House almost unanimously in the Fifty-fifth Congress, but again failed in the Senate. The House vote on the same question in the first session of the Fifty-sixth Congress was 240 in favor, 15 opposed, but the Senate "reported adversely."

Time and method of choosing Representatives.

The time for the election of Representatives has been prescribed by Congress to be the Tuesday next after the first Monday in November of the even-numbered years. The Constitution provides that they shall be elected by

the people. For many years there was variation in the practice of States, some electing their Representatives by districts, others at large. Since 1842 Congress has required the district plan. But a State receiving an additional Representative, by a new apportionment, may elect him at large until the State is re-districted.

The process of districting the States is under the control of the State legislatures, and is usually performed during the first session after a new apportionment has been made, although some States are re-districted more frequently. The only restrictions placed upon the legislatures are those contained in a Congressional act of February 2, 1872, which provides that the districts shall be composed of contiguous territory and contain, as nearly as practicable, an equal number of inhabitants.

Re-districting the States.

The desire to secure party advantage has often led to the manipulation of district lines in a most objectionable and unfair manner. We have good examples of this method in the re-districting of several States after the census of 1890.* Thus, portions of a State containing large numbers of voters of the opposing party were annexed to a district which could not be carried by the party having a State majority. Or at times territory, consisting either of one or more counties or a portion thereof, which had voters that could be spared by the majority party in one district was united with some other district where the majority of their adversaries could thus be offset. Territory is regarded as contiguous when it touches another portion of the district at one point. As a consequence, peculiarly constructed districts are to be found in several States, the most notable being the "shoe-string district" of Mississippi,

"Gerrymandering."

* Congressional Directory, 1893, 2d session of the 52d Congress, 149–206.

which is 250 miles long and but twenty miles broad; the "dumb-bell district" of Pennsylvania, and the "monkey-wrench" district of Iowa. When the Representative districts of a State have been in this manner the objects of political manœuvring or when a similar system has been used in forming State legislative or judicial districts, the State is said to have been "gerrymandered." *

Origin of "Gerrymander." Bryce, American Commonwealth, I, 121.

The origin of the expression is described in the following: "So called from Elbridge Gerry, a leading Democratic politician in Massachusetts (a member of the Constitutional Convention of 1787, and in 1812 elected Vice-President of the United States), who, when Massachusetts was being re-districted, contrived a scheme which gave one of the districts a shape like that of a lizard. A noted artist entering the room of an editor who had a map of the new districts hanging on the wall over his desk, observed, 'Why, this district looks like a salamander,' and put in the claws and eyes of the creature with his pencil. 'Say rather a Gerrymander,' replied the editor, and the name stuck."

Section 4, clause 2.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

The first Monday in December of each second year is a notable day in Washington, for the formal opening of a new Congress brings thousands of visitors to the city. In the House of Representatives the organization must proceed as if the body had not met before. To the Clerk of the preceding House are intrusted the credentials of the members, and from these he makes out a list of the members who are shown to be regularly elected. At the hour of assembly he calls the roll from this list, announces whether or not a quorum is present, and states that the first business is to elect a Speaker. After his election the Speaker takes the oath

The meeting and organization of Congress.

* City wards have also been "gerrymandered."

of office, which is administered by the member who has had the longest service in the House. The Speaker then administers the oath to the members by States. The election of the Chief Clerk and the other officers follows, after which the House is said to be organized.

The Senate is a "continuing body" and no formal organization is necessary. At the opening of a new Congress the Vice-President calls the body to order and the other officers resume their duties. After the President *pro tempore* has been chosen, the newly elected members are escorted to the desk in groups of four and the oath is administered by the President of the Senate. Each house, when organized, notifies the other of the fact and a joint committee of the houses is appointed to wait upon the President and inform him that quorums are present and are ready to receive any communication he may desire to send.

Sessions of Congress.

Each Congress has two regular sessions. The first is called the "long session," for its length is not determined by a definite date of adjournment. It usually lasts until mid-summer and may not extend beyond the first Monday in December, the time fixed for the beginning of the next session. The second, or "short session," cannot extend beyond 12 M., March 4th, the time set for a new Congress to begin. The President may convene Congress in special session.

SUPPLEMENTARY QUESTIONS AND REFERENCES.

1. *a.* What is the number of the present Congress? Give the times for the beginning and end of each session.
 b. For a discussion on the time when Congress should convene, see N. Am. Rev., 164 : 374–376; Atl. Mo., 77 : 98–103.
2. *a.* Should a person be granted the right of suffrage before he is naturalized?

b. In the States which have woman suffrage may women vote for Representatives?

8. It is not required by law that a Representative should reside in the district that he represents, but it is an established custom. What are its advantages and its disadvantages? Compare with the English practice. Bryce, American Commonwealth, I, chapter 19.

4. What is the meaning and the significance of the following statement? "The system of district representation has gone far to make legislation a series of compromises between the interests of the various parts concerned, rather than an attempt to meet the needs of the whole."

5. *a.* Do you favor an educational qualification for voters?

b. Were the States mentioned on p. 142 justified in the enactment of their suffrage laws?

c. Should section 2, Amendment XIV, be enforced? Rev. of R's, 22 : 273–275; 653, 654; 25 : 716–718; Forum, 31 : 225–230; N. Am. Rev., 168 : 285–296; 170 : 785–801; Outlook, 70 : 791–792.

6. What are the points of likeness and of difference between the House of Representatives and the House of Commons? N. Am. Rev., 158 : 257–267; 170 : 78–86.

7. How large is your Congressional district? Compare its area with that of other districts in your State. What is its population? Compare this with the ratio of apportionment; also with the population of other districts in your State. Compare the number of votes cast for Representative in your district with the number cast in districts of other States in different sections of the country. How do you account for the variations? See New York World Almanac.

8. *a.* Give the number of Representatives to which your State is entitled. Was the number increased in the last apportionment?

b. Some interesting facts connected with the apportionment of 1891 are given in the Forum, 30 : 568–577.

c. For "gerrymandering," effects, and remedy, see Forum, 9 : 538–551 ; 12 : 691–697 ; Atl. Mo., 69 : 678–682 ; Rev. of R's, 6 : 541–544.

9. *a.* For accounts of the method by which a census is taken, see American Census Methods, Forum, 30 : 109–119 ; Merriman, Census of 1900, N. Am. Rev., 170 : Century Mag., 68 : 831–842.

b. What were the results of the census of 1900 ; present population ; distribution of the population ; and growth during the century ? Rev. of R's, 22 : 650–652.

10. Who are some of the best known Representatives and Senators ? For what reasons is each noted ?

11. Who are the Senators from your State ? When was each elected ?

12. Give the names of the Speaker, and of the President *pro tempore.*

13. Has the Senate degenerated ? Forum, 23 : 129–144 ; 23 : 271–281 ; Century Mag., 48 : 374–379 ; 54 : 632–633.

14. Should Senators be elected by the votes of the people ? Forum, 18 : 270–278 ; 21 : 385–397 ; Atl. Mo., 68 : 227–232 ; Bryce, American Commonwealth, I, chapter 12 ; Federalist, No. 62.

15. Ought there to be an amendment to the Constitution providing for uniform qualifications for suffrage ?

CHAPTER XV

POWERS AND DUTIES OF THE SEPARATE HOUSES

I. Impeachment.

Article II, section 4. *The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.*

Article I, section 2, clause 5. *The House of Representatives shall . . . have the sole power of impeachment.*

Section 3, clause 6. *The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.*

Section 3, clause 7. *Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.*

The term "civil officers" is here used in distinction from military and naval officers, who are tried for offences by courts-martial. Members of Congress may not be impeached. It has been determined that they are subject only to the rules of the house of which they are members.

Who may be impeached.

What constitutes high crimes and misdemeanors has never been accurately defined, but they are understood

to be those offences of an official nature which the ordinary courts of law cannot reach; such as, abuse of power, acceptance of bribes, or intemperance.

The House of Representatives has the sole power to prefer charges of impeachment. These take the place of the indictment in the ordinary criminal trial. The Senate has the sole power to try all impeachments. The Chief Justice of the United States must preside in the trial of the President, while in ordinary trials the presiding officer is the Vice-President or the President *pro tempore*. The manner of conducting the trial resembles that of a trial by jury. Each Senator is sworn to be impartial in his decision; managers from the House present the charges at the bar of the Senate; the accused may answer in person or through his counsel; and witnesses are examined. When all the evidence has been submitted, the Senate deliberates on the case in secret session. In order that impeachment may not be used for party purposes, it is provided that there shall be no conviction except by a two-thirds vote. During the progress of the trial, the officer impeached is permitted to perform his regular duties.

The method of trial.

No action can be taken by the Senate other than to remove the convicted official from office and to disqualify him from holding any office under the United States. If the offence upon which the conviction is secured is one punishable by law, the person is liable to a regular trial in the courts. The President may not grant a pardon in cases of impeachment.

Judgment on conviction.

Largely because of the cumbersome method of procedure, the number of impeachment trials has been small. These have been the following: Senator William Blount in 1799; Judge John Pickering of the United States Supreme Court in 1803; Judge Samuel Chase of the United States Supreme Court in 1804; Judge James H.

Impeachment trials.

Peck of the Federal District Court in 1830; Judge W. H. Humphries of the United States District Court in 1862; President Andrew Johnson in 1868; and Secretary of War W. W. Belknap in 1876. Judges Pickering and Humphries were convicted.

II. The Quorum, Journal, and Freedom of Speech.

Section 5, clause 1. Determination of membership and quorums.

Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

It is obvious that the power to judge of the elections, returns, and qualifications of members of a legislative body, must exist somewhere. This right could not be better placed than in the houses constituting the legislative body, for by the exercise of this right the independence and purity of the individual houses are preserved.

Contested seats in the Senate.

In the Senate the question raised in a contest usually applies to whether a Senator has been duly elected. It has been held by the Senate that to deprive a member of his seat for bribery or corruption in the course of his election, it must be shown that he was personally guilty of corrupt practices, that the corruption took place with his sanction, or that a number of votes sufficient to affect the result were corruptly changed. As an instance, Mr. Clark of Montana was refused a seat in the Senate during the first session of the 56th Congress, because it was proved that he had secured his election by bribing members of the State legislature.

In the House the name of the person possessing the

certificate of election signed by the Governor of his State is entered on the roll of the House, but the seat may still be contested. Many cases of contested elections are considered by each new house. There were thirty-two seats contested in the 54th Congress. Such cases are referred to the Committee of Elections, which hears the testimony, and presents it to the House for final decision. Each of the cases when presented to the House consumes from two to five days which might otherwise be used for the purposes of legislation. The law provides that not more than $2,000 shall be paid either of the contestants for expenses, but even then, it is estimated, these contests cost the government, all told, $40,000 annually. When the decision is rendered by the House, the vote is, in most cases, strictly on party lines, regardless of the testimony. In view of these facts, it has been suggested that the Supreme Court decide all contested elections.

Contests in the House.

Many disputes have arisen over the question whether the majority necessary to constitute a quorum means a majority of the total number possible to be elected to each house or a majority of those who are actually members, not counting vacancies. The latter view seems to be most in favor. When the House of Representatives is in committee of the whole, 100 members are required to make a quorum. If it appears upon the count of the Speaker or the roll-call of the House that a majority is not present, business must be suspended until a quorum is secured. Fifteen members, including the Speaker, may be authorized to compel the attendance of absent members. This is accomplished as follows: the doors of the House are closed, the roll is called, and absentees noted. The Sergeant-at-arms, when directed by the majority of those present, sends for, arrests, and brings into the House those members

What constitutes a quorum.

who have not a sufficient excuse for absence. When a quorum * is secured the business is resumed.

Section 5, clause 2. Rules and discipline.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

The right to make its own rules is usually intrusted to every assembly, and this power should be vested in the houses of the National legislature. But rules would be without value unless there were some means of punishment provided for those who disregard them. It is also desirable that, in extreme cases, there should be some method of redress. The two-thirds vote necessary to expel a member seems wise in order that expulsion may not be easily used in the interest of a faction or of a political party.

Section 5, clause 3. The Journal.

Each house shall keep a journal of its proceedings and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

By means of the Journal, read at the opening of each day's session, the official record of the proceedings of Congress is made known to the public. The debates do not appear in the Journal, but are published each day in the "Congressional Record."

Senate Journal.

Rule IV of the Senate with reference to the Journal is as follows: "The proceedings of the Senate shall be briefly and accurately entered on the Journal. Messages of the President in full, titles of bills and joint resolutions, and such parts as shall be affected by proposed amendments; every vote, and a brief statement of the contents of each petition, memorial, or paper presented to the Senate shall be entered."

* For the power of the Speaker in counting a quorum, see p. 176.

Another means of keeping constituents informed on the position of their Representatives is through the recording in the Journal of the vote of each member upon the demand of one-fifth of those present. In voting by the "yeas and nays," the Clerk calls the roll of members and places after each name, "yea," "nay," "not voting," or "absent." The Senate rules specify this as the only method of voting. (Other methods of voting are indicated on p. 170.)

The yeas and nays.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 5, clause 4. Power to adjourn.

Without such a provision it would be possible for either house, by adjourning, to block effectually all legislation. The following form of concurrent resolution is usually adopted at such times: "Resolved by the House of Representatives, the Senate concurring, that when the two Houses adjourn on——, the——day of ——, they stand adjourned until 12 o'clock meridian on——, the——day of——." If there is a disagreement between the two houses with respect to the time of adjournment, the President may adjourn them to such a time as he thinks proper. He is also authorized by law to convene Congress at some other place than Washington, in case of the existence there of contagious disease or of any other conditions which would place life or health in jeopardy.

The Senators and Representatives shall receive a compensation for their services to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and going to and returning from the same; and for any speech or debate

Section 6, clause 1. Compensation and freedom from arrest.

in either House, they shall not be questioned in any other place.

Salaries paid Senators and Representatives.

The question, ought compensation to be given members of legislative assemblies or should their services be regarded as honorary gave rise to a heated discussion in the Constitutional Convention. Members of the State legislatures were receiving salaries, but members of the English Parliament were not. Finally, the American practice prevailed, for it was thought that men of ability, though poor, might thus be enabled to enter the National legislature and that the position might be made more attractive than that of a member of a State legislature.

The compensation of Senators and Representatives from 1789 to 1815 was six dollars per day and thirty cents for every mile travelled, by the most direct route, in going to and returning from the seat of government. Prior to 1873, this amount was changed several times by act of Congress. The compensation then agreed upon and still paid is $5,000 per year, with mileage of twenty cents, and $125 per annum for stationery. The Speaker receives $8,000 a year and mileage. The President *pro tempore* receives the same amount while acting as president of the Senate.

To many $5,000 seems a large salary, but the great expense of living in Washington, especially if the Congressman and his family take part in the social life of the capital, renders the salary quite inadequate. Members have been known to pay more than their salaries for house-rent alone. Many members make a financial sacrifice in accepting a seat in Congress.

Privilege from arrest.

As already noted, a member of Congress may be punished for an offence by the house to which he belongs. It is manifest that he should be free from arrest, except in case of treason, felony, and breach of the peace; otherwise his district might, sometimes under false charges, be deprived of representation, and National legislation be interrupted.

Freedom of speech is quite as important in a repre-

sentative government as freedom of person. This privilege extends to all utterances used in the course of legislation. Since all Congressional debates are published, it is held to apply to them also. Freedom of debate.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office. Section 6, clause 2. Disqualification to hold other offices.

The purpose of this provision, which was discussed at considerable length in the Constitutional Convention, seems to have been to remove the temptation on the part of Congressmen to create offices or to increase the emoluments of those already existing in order to profit by such legislation. It was also thought necessary to guard against bargaining. The President, in order to secure certain legislation, might agree to appoint to offices thus created Congressmen who aided him.

The exclusion of United States officials from seats in Congress was due to the desire of appeasing State jealousy, which asserted that the National government would secure an undue influence over the State governments. It is advocated, with good reason, that members of the Cabinet should be privileged to take part in the discussion of measures in Congress which pertain to their own departments. Alexander Hamilton asked for this privilege, but it was refused because of the fears of his influence. The precedent thus established has always been retained. But since executive officers are often invited to present their views before committees of Congress, they may exert great influence upon legislation.

CHAPTER XVI

PROCEDURE IN CONGRESS

THE first step in the enactment of a law is the introduction of a bill. In the House of Representatives this is done simply by giving the bill, indorsed with the name of the member introducing it, to the Speaker; generally it is laid on the Speaker's desk.* The title of the bill is recorded and the Speaker refers it to a committee.

FORM OF A BILL

56TH CONGRESS
1ST SESSION

H. R. 6071

[Report No. 876.]

In the House of Representatives

JAN. 12, 1900.

Mr. Loud introduced the following bill, which was referred to the Committee on Post-Offices and Post-Roads and ordered to be printed.

FEB. 19, 1900.

Reported with amendments, referred to the House Calendar, and ordered to be printed.

A BILL

To amend the postal laws relating to second-class mail matter.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That mailable matter of the second class shall embrace

* Private bills, however, are given to the Clerk of the House.

The introduction and reference of a bill do not necessarily take place during a session of the House, and the bill will not come before the House for its consideration until the committee reports it back.

Before proceeding further with the history of a bill we must notice a most important feature of Congressional machinery—namely, the committee system. Almost every deliberative body finds it convenient to intrust certain parts of its business to committees. When the assembly is large, and especially when the mass of business is great, committees are absolutely necessary. After a committee has given consideration to any matter in its charge, it submits to the main body a report recommending whatever course of action it deems wise. The assembly may either adopt or reject this report. In Congress many thousands of bills are introduced in a single session. By far the greatest part of the work of Congress, therefore, must be done in committees. In the House, standing committees are appointed by the Speaker at the beginning of each Congress; to these all bills must be referred. The chairman of each committee and a majority of its members are selected from the party to which the Speaker belongs.

The committee system.

In the long session of the 56th Congress 12,152 bills were introduced in both houses; 1,215 of these became laws. Of these, 283 were public acts and 932 private acts. There were 137 working days in this session, which lasted from December 4, 1899, to June 7, 1900. In this Congress, the Rules of the House provided for 55 standing committees, varying in membership from 5 to 17. Among the most important standing committees of the House are the following: Ways and Means (the most important because it has charge of bills for raising revenues), Appropriations, Banking and Currency, Foreign Affairs, Military Affairs. The number of committees in the Senate is not much less than the number in the House. The names of a few are: Finance (corresponding to the Committee on Ways and Means in the House), Agriculture, Com-

merce, Foreign Relations, Indian Affairs, Railroads, Public Lands.

Both in the House and in the Senate, every member is on some committee, and some members have places on several committees.

Power of committees over bills.

Over the bills placed in their charge, committees have almost absolute control. "They may amend a bill as they please; they may even make it over so entirely that it is really a new bill, reflecting the views of the committee rather than the views of the originator; or they may, either by reporting a bill adversely, or by delaying to report it until late in the session, or by simply not reporting it at all, practically extinguish a bill."* So it is with good reason that the writer quoted above concludes that "the committees might almost as well be allowed to introduce all legislation."

The influence of committees in determining what laws shall be passed is further shown by the following facts: 1. Their sessions are secret and their proceedings are seldom published. Committees frequently conduct "hearings," however, at which testimony and arguments are presented by both friends and opponents of a measure. 2. Only a very small proportion of the bills referred are ever reported back to the House. The House may, however, require a committee to report a bill. 3. The House really deliberates upon only a few of the most important bills that are reported. It accepts the recommendations of the committees as to the proper disposition of the great majority of these bills, and they are passed or rejected without question or debate. About five or ten per cent. of the measures introduced become laws, and only a small number of these are bills of importance.

Only in small measure, therefore, do we have, in the House, legislation by deliberation and debate. The

* Follett: The Speaker, 242-243.

power intrusted to the committees is so great that nothing but the personal integrity of the Representatives can prevent its abuse. Corrupt influences may easily be brought to bear upon them, for there are always present in the "lobby" men whose sole aim is to influence legislation in this way. Since the committees are held responsible only in a slight degree for the business intrusted to them, the detection of such evils is very difficult.

Responsibility of committees.

When a bill is reported back to the House it is placed on one of three calendars: the first contains all bills for raising revenue and all bills of a public character appropriating money; the second, all other bills of a public character; the third, all private bills. Bills are not brought before the House for discussion in the order in which they stand on the calendars. Whether a bill will ever get farther than the calendar depends to some extent upon its importance and merits, but chiefly upon the skill and influence of the member who has charge of it. This is generally the chairman of the committee that reported the bill.

The calendars.

Like all similar bodies, the House has an "order of business" laid down by the Rules. 1. After the prayer by the chaplain each day's business is opened by the reading and approval of the Journal. 2. Then the Speaker lays before the House messages from the President, reports and communications from heads of departments, etc., which are at once referred to special or standing committees. 3. Next in order comes unfinished business. 4. The rules provide that on all days except the second and fourth Mondays of each month,* one hour shall be given to a "call of the committees." During this "morning hour" "each committee when

The "order of business."

* On these days the business reported by the Committee on the District of Columbia has precedence.

named may call up for consideration any bill reported by it on a previous day." At the expiration of one hour the House may go into "Committee of the Whole" (see p. 171); or, the "morning hour" *may* continue a longer time. Beyond this order of business the procedure is too complicated for brief statement.*

It is during the call of the committees that a member in charge of a bill may, by previous arrangement with the Speaker, secure *recognition*, that is, the right to speak. He thus brings his bill before the House. The consideration of this bill may occupy the entire hour, during which the member has *control of the floor*. After speaking, he generally *yields the floor*, temporarily, to others, both friends and opponents, who debate upon the bill or endeavor to amend it. Before a bill is brought to a final vote the Clerk reads it three times: the first time by title, the second time in full, and the third time by title only, unless the reading in full is demanded by a member. When the Speaker puts the question of the passage of a bill he says, "As many as are in favor say *aye*"; then "As many as are opposed say *no*." If he doubts which side has prevailed, or if a *division* is called for, a rising vote is taken. If he is still in doubt, or if a count is demanded by at least one-fifth of a quorum, two members are appointed tellers; the members voting in the affirmative pass between the tellers and are counted; then those favoring the negative. If the question is one that requires the *yeas* and *nays*, or if this method of voting is demanded by one-fifth of those present, the roll is called. Each member who wishes to vote responds when the Clerk reads his name. This process consumes half an hour or more. After the roll-

Methods of voting.

* The foregoing account is based on the Rules of the House for the 56th Congress. They are, of course, subject to alteration by subsequent Congresses.

call is completed, the Speaker announces the *pairs*. Members who belong to different political parties may agree that they shall be recorded on opposite sides of party questions, whether they are present or not. Or, pairs may be arranged for particular votes only. This device enables a member to be absent from the House without feeling that his vote is needed. Pairs.

An important method of procedure remains to be described. The Rules of the House require that all bills that levy taxes or appropriate money shall be considered in "Committee of the Whole House on the State of the Union." This may be done at any time after the "morning hour" that is devoted to the call of the committees. The Speaker leaves the chair, calling another member to his place as chairman. In Committee of the Whole great freedom of debate is allowed. Consequently, a bill receives much more discussion than under the general order of business. When the debate is closed, the committee *rises and reports;* that is, the Speaker returns to his chair and the chairman reports to the House whatever action has been agreed upon in the Committee of the Whole. The House then adopts this report. It is under this procedure that most of the long speeches reported in the "Congressional Record" are delivered. Frequently, instead of actually delivering his speech, a member merely makes a few remarks and asks *leave to print* the rest of it. Members frequently get reprints of their speeches (whether these were actually delivered or not) for distribution among their constituents and for campaign literature. Committee of the Whole.

We have now followed the course of a bill from its introduction in the House through the committee and the debate which it may receive, to the final vote on its passage. When a bill has passed the House it receives the signatures of the Speaker and the Clerk and is car- The bill in the Senate.

ried to the Senate. Here the presiding officer immediately refers it to a committee. The process of passing bills in the Senate is in general the same as in the House. Some differences in procedure will, however, be noted later. Each house has the right to amend a bill that has already passed the other house. If the house in which the measure originated does not accept the amendment the bill fails to become a law. Or, a *conference committee* may be arranged, which is composed of a few members from the House and Senate committees that have previously considered the bill. If the conference committee succeeds in arranging a satisfactory compromise, each house will pass the bill in the form agreed upon and reported by this committee.

Conference committees.

The power of enacting laws is not vested solely in Congress, but it resides to some extent in the President also. The manner in which the President may exercise his legislative authority is now stated.

Article I, section 7, clause 2.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like

manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

Reasons for the veto power.

The President is expected to use his veto power whenever, in his opinion, a bill of Congress is unwise or unconstitutional. The division of the legislative power between these two departments of government is in accordance with the principle of "checks and balances" which we may find exemplified in many other parts of our National system. Hasty action on the part of Congress, or an attempt to encroach upon the jurisdiction reserved to the other departments or to the States, may be opposed by the Presidential veto. The veto power is not absolute, however, since a determined majority of two-thirds of the members in both houses may prevail in spite of it. This feature of the system is based on a sound principle, also, since it must be presumed that the will of the people is more adequately represented in a Congress that is constituted in this way, than in the person of the President alone.

Vetoes by various Presidents.

Before President Johnson, the largest number of bills vetoed by any one President was twelve, by President Jackson. Disagreement with Congress on the reconstruction policy accounts for President Johnson's twenty-one vetoes. Some of the bills to which he refused assent were important and were afterwards passed over his veto. President Grant vetoed forty-three bills, one of which (the so-called "inflation bill") was of great consequence. President Cleveland vetoed three hundred and one bills in his first administration, the total number of vetoes in our history before that time having been but one hundred and thirty-two. This is largely accounted for by President Cleveland's refusal to sign certain private pension bills, of which a great number are passed by every Congress.

The "pocket veto."

The President may cause a bill to fail by neither signing nor vetoing it during the last ten days of a session. The term "pocket veto" has been applied to this method of defeating legislation.

Lest Congress should seek to evade the necessity of submitting its acts to the President, the following clause of the Constitution prohibits the enactment of legislation under any other title than that of a bill.

Section 7, clause 3.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Because the House represents the people more directly than does the Senate, and because it is, generally speaking, the more interesting body to observe, we shall now look farther into its workings to discover how its action is really controlled. When one considers the immense mass of business laid before the House and the more than fifty committees that work independently of one another, each member and each committee endeavoring to secure the passage of particular bills, it seems a wonder that any unity of purpose or harmony in legislation can be attained. But forces are at work beneath the surface to bring order out of the apparent chaos. The first of these forces is the power of the majority. Party caucuses are of frequent occurrence, especially if the majority is small and it becomes necessary to present a united front to the opposition. A party caucus—that is, a meeting of all the Representatives belonging to one party—will decide which measures must be passed and which rejected; or it may compel all its members to agree upon a certain measure for the sake of party interests. In this way a more or less consistent policy may be carried out. The power of the majority may

Unifying forces in the House.

The power of the majority.

also be seen at work in the committees. The majority of a committee sometimes frames a bill without consultation with the minority members. The latter are called in when the measure is complete, and their views are given a hearing, but they really have no voice in the matter. They may, however, present a minority report to the House.

A second force tending to unify the action of the House is the power of the Speaker.* Since the Speaker represents the majority, he is dependent upon it for the exercise of his power. But once elected, this officer is regarded as the leader of the majority and his influence is very great in determining party policy. The Speaker's power is exerted in several ways:

The power of the Speaker.

1. He appoints all the committees of the House. Since the fate of bills depends largely upon committee action, the Speaker can influence legislation by the composition of his committees. He may, for instance, appoint on the Ways and Means Committee men whom he knows to be favorable to a policy in which he believes. The Speaker is not always allowed to have his own way in the matter, however, since there are certain unwritten rules under which members often claim the right to hold positions on committees, or to be promoted to chairmanships, by reason of long service.

2. The Speaker is chairman of the Committee on Rules. It will be remembered that bills are not considered in their order on the calendars. This committee decides which bills shall be taken up, what length of time shall be given to each, and when each shall come to a vote. It thus makes a sort of program for each day's proceedings and so decides the fate of a great many bills. Of course the Committee on Rules

Committee on Rules.

* Miss Follett's, The Speaker, is the best treatise on the history of this office and contains the best summary of the Speaker's powers.

must be sustained by a majority of the House; but the House generally looks to this committee for leadership. The Speaker has the preponderance of influence on this important committee; hence the power which he may wield at critical times is very great.

Filibustering.

3. When the minority foresee that they will be beaten on an important question they sometimes resort to *filibustering* or *obstructive tactics*. They endeavor to delay action in the hope that the majority will be driven by sheer exhaustion to compromise. They accordingly consume time by making long speeches. But since the Committee on Rules (sustained by a majority of the House) may fix the time for a vote, this method of filibustering is not always effective. Again, the minority may attempt to delay action by making *dilatory motions* (such as a motion to adjourn) and then calling for the yeas and nays. Since each roll-call occupies half an hour or more, this method has sometimes in the past been very successful. But in recent years the Speaker has been given authority to decide when, in his opinion, such motions are intentionally dilatory, and to refuse to entertain them. At such times, therefore, the Speaker sets aside the ordinary rules of parliamentary practice and governs the House arbitrarily; but it must be remembered that he is executing the will of the majority.

Counting a quorum.

Speaker Reed used an effective method to stop filibustering in the 51st Congress, when the Republican majority was very small. In order to prevent the passage of bills, members of the minority would refuse to vote when the roll was called. As it was often impossible to secure the attendance of all members of the party in power, the roll-call would show less than a majority "present." Hence business would be stopped under the point of order "no quorum." At such a juncture, Speaker Reed directed the clerk to count as present members sitting in their seats who had not voted. Thus a quorum was secured and bills were passed. The Supreme Court has pronounced this procedure legal, and subsequent Congresses have followed the practice.

4. Much of the power given to the Speaker in the ways enumerated would be useless but for the power of *recognition*. As in other assemblies, before anyone can speak he must be recognized by the chair. The Speaker may recognize whom he pleases, not necessarily the one who first addresses him. Consequently, if a member wishes to push his bill through the House, it is necessary to consult the Speaker and obtain his consent. He will then be recognized at the time agreed upon. By a similar arrangement other members will secure the right to debate the bill. In the exercise of this power, the Speaker endeavors to be fair, giving both sides a hearing upon important questions. But at critical moments he will be arbitrary, thus securing the action desired by the majority, against any efforts of the minority to defeat their will. Recognition.

Procedure in the Senate differs from that in the House in three important respects. 1. The presiding officer, whether he be the Vice-President or the President *pro tempore*, has much less power than the Speaker. He does not appoint committees; these are elected by the Senate, after the party in power has selected in caucus the majority members, and the opposition party the minority members, of each committee. The President of the Senate is more impartial in his recognition of both sides, therefore filibustering is easier in the Senate than in the House. Comparison of Senate and House procedure.

2. There is less restriction on the freedom of debate in the Senate; consequently important measures are passed less promptly than in the House.

3. The Senate has a higher standard of decorum than that which prevails in the House. Senators are expected to heed carefully one another's rights and wishes, and to avoid extreme exhibitions of party spirit. The Senate is, therefore, a more quiet and orderly body

than the House; in it angry debate and violent behavior are of rare occurrence. In its methods of procedure the Senate is more deliberative and less business-like than the House.

Cabinet system of government.

In State legislatures throughout the Union the method of procedure is substantially the same as that which we have seen at work in Congress. But this system, sometimes called the "Committee system," is found nowhere else. Every national legislative body in the world except our Congress works under the "Cabinet system" of government. This may be best seen in the English Government, where it was first developed.

The English Cabinet system.

The supreme legislature of England is Parliament, composed of the House of Commons and the House of Lords. Although England is nominally a kingdom, the monarch has little real authority. The actual executive is the *Cabinet;* at its head is the Prime Minister, who corresponds in many ways to our President. In England the legislative and executive departments are united; for the members of the Cabinet must be members of Parliament, and the Prime Minister is always the leader of the political party that has a majority in the House of Commons. Nominally the monarch chooses the Prime Minister, but in reality he has no choice. The members of the Cabinet, numbering fifteen or twenty, are executive officers. Each presides over a department and controls the administration of its affairs as Cabinet officers do in the United States. At the same time, it is the duty of Cabinet ministers to participate in the legislation of Parliament: (1) by framing and introducing all important bills, and (2) by pushing these bills through Parliament by debate and otherwise.

The Prime Minister "leads" the majority party in the House of Commons; or, if he is a member of the Lords, another Cabinet member is leader of the Commons. The opposition party likewise has its leader in each house. The "Opposition" tries to hamper or defeat the measures of the Government.

The length of a Congress in the United States is fixed at two years. A term of Parliament may last seven years, but Parliament may be dissolved and a term ended at any time. The way in which this comes about is the most essential feature of Cabinet government. The Cabinet, we have seen, is put into office by the majority in the House of Commons, and it will retain its position as long as it is sustained by that majority. If, however, its policy

proves to be unpopular, or its administration weak, some of its former friends will withdraw their support. There may then be passed a vote of "lack of confidence"; or, more usually, the Cabinet fails to pass an important bill because it no longer commands sufficient votes in the House of Commons. In either case the Cabinet resigns, Parliament is dissolved, and a general election is held at which the people elect new members of the House of Commons. In this new house, the party that has just been retired from power may be restored if the people sustain its policy; if they do not, the opposite party will have a majority in the House of Commons and its leader will become Prime Minister.

Dissolution of Parliament.

Certain advantages are claimed for this system over the Congressional or Committee system. 1. It is said that the party in power is more directly responsible to the people because its tenure of office is not fixed, but liable to termination at any time. "Government," as the governing officials are called, will therefore watch public opinion very closely and try to avoid all unpopular measures. Moreover, the people watch the ministry closely because they may be called upon at any time to approve or condemn its policy by electing a new House of Commons. For the Congressional system it is claimed that these same advantages are secured by the frequency of our elections. The hope of re-election creates responsibility.

Responsibility.

2. Under the Cabinet system the harmony of the legislative and executive departments is certain. The House of Lords may not agree with the Commons, but its power is very much less than the power of the Senate in the United States. The Lords may delay, but they will never defeat an important bill which the Commons, backed by the people, are determined shall pass. In the United States the President may not be of the same party as the majority of Congress; or, being of the same party, he may have very different views. There will consequently be friction and a failure to harmonize the action of these two departments. On the other hand, it is urged that a Cabinet is undertaking too much when it assumes both legislative and executive functions. Attention is also called to the fact that our legislative and executive are not completely separated. Certain functions are shared between them. Moreover, it is quite customary for Congressmen and committees to consult heads of departments and other officials while framing bills.

Harmony.

3. In Parliament, the leadership of certain men is more clearly

recognized and more consistently followed than in Congress. Consequently, the measures by which a party carries out its policy have a certain unity of purpose and harmony among themselves. The Committee system, English writers say, discourages leadership, by the division of responsibility for legislation; it makes possible poorly constructed and inconsistent laws which do not pretend to be parts of a deliberate governmental policy. Defenders of the Committee system point to the unifying influence of the party caucus and to the work of conference committees in harmonizing differences between the houses. Moreover, it is claimed that the Speakership furnishes a sufficient element of leadership and that more is not desirable.

Leadership.

Supplementary Questions and References.

1. From the Congressional Record one may learn the forms used by members of Congress in addressing the chair and each other; also the forms of response used by the Speaker and the President of the Senate.

2. In the Congressional Directory will be found lists of the standing committees of each house, as well as select and joint committees; diagrams of the city of Washington, the Capitol building, and the floors of the houses showing the seats occupied by the members; also biographical sketches of Senators and Representatives.

3. What difference is there in the granting of recognition to members in the Senate and House? Harrison, This Country of Ours, 45–48.

4. One way of accounting for the large number of bills introduced into Congress is discussed in Bryce, I, 133–134 (136–138).

5. What appearance does the House of Representatives make when at work? Bryce, I, 138–144 (142–148).

6. What are the relations of the two houses of Congress? Bryce, I, chapter 18.

7. The veto power. Bryce, I, 53–56 (58–61); Cooley, Principles of Constitutional Law, 49, 166–169.

8. What is the importance of the Speakership of Mr. Reed (1889–91)? Follett, The Speaker, 116–117, 120–121.

9. What is meant by the "Speaker's list?" Follett, 251–253.

10. How are obstructive tactics carried on? Alton, Among the Law Makers, chapter 20.

11. Why is there little debate in the House of Representatives? Wilson, Congressional Government, 72–73, 86–102.

12. Compare the Speaker of the House of Representatives with the Speaker of the House of Commons. Bryce, I, 134–137 (138–141).

13. The best descriptions of Congressional procedure are found in Bryce, I, chapters 10–16; Wilson, Congressional Government, chapters 1, 2, 4; Follett, The Speaker; McConachie, Congressional Committees. See also Reed, Obstruction in the National House of Representatives, N. Am. Rev., 149 : 421–428; Reed, Reforms Needed in the House, N. Am. Rev., 150 : 537–546; Mitchell, How a Law is Made, N. Am. Rev., 159 : 537–544.

14. On the powers of the Speaker, see Forum, 23:343–350; Atl. Mo., 64 : 64–73; N. Am. Rev., 151 : 385–398; Arena, 22 : 653–666; Reed, Limitations of the Speakership, N. Am. Rev., 150 : 382–389; Carlisle, N. Am. Rev., 150 : 390–399; Hart, Essays on American Government, chapter 1, The Speaker as Premier.

15. The English Cabinet system is best treated in Bagehot, The English Constitution; Wilson, The State. See also Scribner's Mag., 14 : 593–600; Arena, 2 : 581–587; Harper's Mag., 95 : 110–128; 205–224; 88 : 34–51; 686–692; Outlook, 61 : 519–529; N. Am. Rev., 157 : 215–224.

16. For comparisons of the Cabinet and Committee systems consult Bagehot, 84–100; Bryce, I, 144–149, 150–152, 165–170, 280–290 (147–153, 154–156, 168–173, 286–297); Wilson, Congressional Government, 72–73, 86–102, 115–124, 318–324; Fiske, the Critical Period of American History, 289–300; N. Am. Rev., 158 : 257–269; 159 : 225–234; 161 : 740–752; 162 : 14–20; 164 : 625–633; 170 : 78–86; Atl. Mo., 57 : 542–553; 65 : 766–773.

CHAPTER XVII

NATIONAL FINANCES

NOTHING revealed more completely the fatal weakness of the government under the Articles of Confederation than its failure to exercise effectively the power of taxation. While the Articles provided that the expenses of the general government should be paid out of a common treasury "which shall be supplied by the several States," the taxes were to be "laid and levied by the authority and direction of the legislatures of the several States." In practice, each State contributed as much or as little as it pleased. The general government made "requisitions" upon the States for certain amounts, but it had no means of compelling the legislatures to raise their quotas. The failure of the efforts that were made to amend the Articles so as to give Congress power to levy import duties, marks the complete break-down of the government's finances. There was needed a system under which the National authority might be exerted directly upon the individual citizens, without the intervention of State authority. This was secured by the following clause of the Constitution.

Finances of the Confederation.

Article I, section 8, clause 1.

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

Coupled with this grant of power was a prohibition:

Section 9, clause 5.

No tax or duty shall be laid on articles exported from any State.

The forms of taxation most employed by the National government are known as duties* and excises. The duties which Congress is empowered to levy are taxes on goods imported into the country. The collection of duties takes place at custom houses situated at the "ports of entry." There are more than one hundred and fifty ports of entry distributed throughout the United States; the greater part, though not all, are seaport cities. Each custom house is in charge of a collector. Duties are of two kinds, specific and *ad valorem*. Specific duties are fixed amounts levied on certain units of measurement of commodities, as the pound, yard, or gallon. For example, under the tariff law of 1897 the duty on tin plate was one and one-half cents for each pound. *Ad valorem* duties are levied at a certain rate per cent. on the value of the articles taxed. The law of 1897 laid a duty of 50 per cent. on cotton gloves. On some articles both kinds of duties are collected; under the law just mentioned, the duties on tapestry Brussels carpets were 28 cents per square yard and 40 per cent. *ad valorem* in addition.

Kinds of duties.

At New York, where by far the largest part of our importations are entered, two thousand officers and clerks are employed in the custom house. The method of collecting duties may be briefly described. When goods are purchased in a foreign country, an invoice of them, stating descriptions and prices, is filed with the United States consul† in the district where the purchase is made. The consul sends a copy of the invoice to the officials of the custom house at the port of entry to which the goods are shipped. Upon their arrival in the United States, the cases are opened and the goods are examined to see that they correspond in amount and prices to the invoice record. If, in the judgment of the custom house appraisers, the goods are valued too low, the valuation will be raised. In case of great undervaluation, a fine is imposed, and in extreme cases the goods are confiscated.

The collection of duties.

* "The terms duties and imposts are nearly synonymous." Cooley, Principles of Constitutional Law, 54.

† See pages 286, 287.

If an importer does not wish to sell his goods immediately, they may be stored in a "bonded warehouse" which is under the supervision of Government officials. The owner agrees, under bond, to withdraw the goods and pay the duties (or else to export the goods) within three years. By a similar arrangement, goods may be shipped "in bond" from a port of entry to a "port of delivery."

Goods in bond.

Passengers on steamships coming from foreign countries are required to declare what dutiable goods they have among their baggage. Upon landing, their baggage is examined; trunks and valises are opened, and in suspected cases the persons of travellers are searched for concealed dutiable goods. The temptation to undervaluation and to smuggling, in order to escape this form of taxation, is so great that constant vigilance is necessary at custom houses and along the borders of the United States to prevent these frauds. Special agents and revenue cutters are employed to detect violations of the law.

Smuggling.

A schedule of rates of duties is called a tariff. It is evident that the importer adds the amount paid as a duty to the price of an imported article when he sells it. If a higher price is caused in this way,* this may deter importation and encourage the production of such articles in this country. Consequently, high rates of duties may have a decided influence upon the industries of a country. When tariff rates are fixed without reference to the way in which they may affect industries, we have a "tariff for revenue;" the sole object in view is the raising of a certain amount of revenue. In a "protective tariff" law, on the other hand, the rates are fixed with the purpose of encouraging certain industries; they are made so high that it will be less profitable to import the articles. The question, Which tariff policy is the wiser? has been one of the leading issues in National politics during the greater part of our history.

Tariff laws.

The United States has entered into "reciprocity treaties" with various countries for securing the reduction of tariff rates. Each

* It may happen that the foreign producer will lower his prices sufficiently to counterbalance the effect of the duty in this country.

country agrees to admit certain products of the other country at reduced rates, or free of duty. These are commodities in the production of which there is little or no competition between the parties to the treaty. Reciprocity.

The tariff law of 1897 provided that when a foreign country pays a bounty of a certain amount on the exportation of a production which is imported into the United States in competition with our own production, the Secretary of the Treasury is instructed to raise the duty on that article. This is called a "countervailing" duty. In 1901 such a duty was applied to sugar imported from Russia. Countervailing duties.

Excises are taxes levied on the manufacture and sale of commodities. It is customary to speak of these taxes as "internal revenue." Liquors and tobacco are the most common objects of excise taxation.* Besides these, the National government taxes snuff, opium, oleomargarine, filled cheese, mixed flour, and playing cards. This was the list of articles yielding internal revenue before additional taxation became necessary to pay the expenses of the Spanish-American War. Besides increasing the liquor and tobacco taxes, the law of 1898 greatly enlarged the scope of the internal-revenue system. The chief additional items included were taxes on bankers and brokers, billiard rooms, and legacies, and those on proprietary articles and legal documents.† Under this law, the internal-revenue receipts increased from $170,000,000 in 1898 to $273,000,000 in 1899. The 56th Congress, before its adjournment in 1901, repealed some of the documentary taxes, such as the taxes on bank checks, telegraph and telephone messages, and express receipts, and reduced the taxes on beer and The internal-revenue system. The taxes of 1898.

* Taxes are levied not only upon the liquors themselves but upon the business of brewing and rectifying; of selling by wholesale and by retail; of manufacturing stills; and upon the stills themselves. A list of these taxes may be obtained from the collector of any internal-revenue district.

† The documentary taxes are similar to those imposed by Parliament in the Stamp Act of 1765. They were also levied by our government during the Civil War.

tobacco. A little less than one-half of the new taxes imposed in 1898 were removed at this time, and the remainder by the next Congress in 1902.

Collection of excise taxes.

The collection of excise taxes is supervised by the Commissioner of Internal Revenue, who is the head of a bureau in the Treasury Department. There are more than sixty revenue districts in the United States, with a collector as the chief official in each. This officer is responsible for the proper enforcement of the laws in his district; special agents are employed by the bureau to examine into suspected cases of fraud.* The greater number of these taxes are paid by the purchase of stamps which must be affixed, in the proper denominations, to the articles taxed. When a license fee is required for carrying on an occupation, the purchase and display of a certificate secures the enforcement of the law. Distilleries are under the supervision of government "store-keepers," who inspect and record each step in the manufacture of spirits. A gauger measures the contents of each package and affixes the stamps. In the manufacture of fermented liquors, proprietary articles, and tobacco, however, the manufacturers themselves affix the stamps.

Forms of excise taxes.

The first internal-revenue law, that of 1791, taxing the production of distilled spirits, was a part of Hamilton's financial policy. In western Pennsylvania it caused violent opposition, known as the Whiskey Rebellion By laws of 1794 and 1796, carriages, chariots, and coaches of various kinds were taxed at amounts ranging from $2 to $15 each. Other excise taxes enacted at different times may be briefly mentioned: 1794, upon all sales at auction; 1813, upon sugar refined in the United States, and legal instruments; 1815, upon pig iron, nails, candles, paper and leather manufactures, playing cards, hats, umbrellas, saddles and bridles, boots, shoes, household furniture, and watches. The taxes of 1815 were not collected after 1817. In 1862, besides increased taxes upon liquors and tobacco, license taxes were imposed upon persons or corporations carrying on trade, and upon a vast number of manufactured articles. Corporations paid taxes upon gross receipts and dividends.

We must now direct our attention to the very important constitutional provision that "all duties, imposts

* "Moonshiners" who run illicit stills are numerous in the remote mountainous districts of the Southern States.

and excises shall be uniform throughout the United States." The justice of this rule is evident.* The rates must not vary at different ports of entry and in the various collection districts of the country. A duty is called an *indirect* tax, because the one who pays it adds the amount to the price of the commodity upon which it is levied. The consumer of the imported article, therefore, pays the tax in reality, but he pays it indirectly to the government. This is true, also, of most excise taxes, such as those upon liquors and tobacco. Taxes which cannot be shifted in this way are commonly called *direct*. Now, the Constitution uses the term "direct taxes," but the distinction between direct and indirect taxes which we have just noted has not been followed in Constitutional interpretation. It is evident that the tax on carriages, for instance, could not be shifted; yet the Supreme Court decided, in 1796, that this was not a direct tax. It was imposed uniformly throughout the United States. According to this decision, consistently followed until 1895, the only taxes that were "direct," in the Constitutional sense, were poll or capitation taxes (that is, those assessed on individuals) and taxes on land. Consequently, many forms of taxes enumerated in the discussion of the internal-revenue system, although direct in the popular, or economic, sense, are indirect from a legal stand-point; the rule of uniformity, therefore, applies to them.

Uniformity of duties.

Constitutional rules for the imposition of taxes.

The Constitutional rule regarding the imposition of direct taxes is twice stated.

Representatives and direct taxes shall be apportioned among the several States . . . according to their respective numbers. . . .

Article I, section 2, clause 3.

* The question of its application to the insular possessions of the United States is discussed in Chapter XXVIII.

Section 9, clause 4.

No capitation, or other direct, tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken.

We have seen how this rule became a part of the Constitution as one of the compromises necessary to secure its acceptance. Direct taxes have been levied and apportioned among the States by Congress several times; but it is not likely that another such tax will be enacted under the present Constitutional rule. This is because the sectional inequalities in population do not correspond with inequalities in wealth (*i.e.*, ability to pay the tax). The more populous States are also the more wealthy, but the *per capita* wealth is much greater there than in those States where population is less dense. Consequently, in the agricultural States of the South and West, the burden of taxation would be unjustly heavy.

History of direct taxes.

In 1798 Congress levied a direct tax of two million dollars and apportioned it among the States in proportion to their population. The objects taxed were houses, land, and slaves, and the collection was made by Federal officers. In 1813, when another direct tax of three million dollars was levied, the same objects were taxed, but the law provided that each State might assume and collect its own quota. A similar provision was included in the law of 1815, levying a direct tax of six million dollars, but most of the States did not avail themselves of the privilege. The direct tax of 1861 (twenty million dollars) was apportioned among the States and levied upon land alone. All but a few of the States that paid the tax collected it by their own officers. It was not possible to collect this tax in many of the southern States, so in 1891 the amounts that the other States had paid were refunded to them.

Income taxes constituted an important feature of the internal-revenue system that was put into operation during the Civil War. In each of the several laws en

acting these taxes, provision was made for the exemption from taxation of a small income, as $800 at first, and later, $600. For incomes above these figures, the rates were generally made progressive; for example, the law of 1862 taxed incomes above $600 and less than $5,000 at the rate of 5 per cent., those from $5,000 to $10,000, 7½ per cent., and those above $10,000, 10 per cent. These taxes were repealed after 1872.

Income taxes.

It will be noticed that Congress treated these income taxes as indirect, making the rates uniform throughout the United States. This was in accordance with judicial decisions, which made all taxes, except those on persons and land, subject to this rule.

Following these precedents, Congress enacted, in 1894, an income-tax law providing that all incomes over $4,000 should pay a tax of 2 per cent. on the excess above that amount. The following year, contrary to all former decisions in which the meaning of the words "direct tax" had been determined, that term was declared by the Supreme Court to include such income taxes as were levied by the law of 1894. Consequently, since Congress had not determined the total amount to be collected and apportioned it among the States according to their population, this law was declared unconstitutional.

Law of 1894 declared unconstitutional.

Legacy, or inheritance, taxes were included in the revenue measures of the Civil War period, but they were repealed soon after its close. This form of taxation was revived by the law of 1898. Inheritances are divided into four classes, according to the degree of relationship between the decedent and the inheritor; the rates increase as the relationship becomes more distant.

Legacy taxes.

We have now reviewed the various forms of taxation employed by the National government to secure revenue.

In the enactment of laws that impose taxes, Congress is governed by the Constitutional provision that

Article I, section 7, clause 1.

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Revenue bills in Congress.

The framing of revenue bills is entrusted to the most important House committee, that on Ways and Means. Their bills are frequently known by the name of the chairman of the committee. In the Senate the Finance committee considers and recommends amendments to bills for raising revenue. These important measures, as finally passed, are in most cases the result of compromises between the two houses, arranged by conference committees.

We have seen that the collection of National taxes is accomplished by an army of Federal officials whose jurisdiction extends into every corner of the country. We have seen that the objects of taxation are very numerous, so that every individual aids, directly or indirectly, in the support of the National government. The ease with which our immense revenue is raised seems marvellous to citizens of the Old World countries, where conditions of life are harder. Indeed, so great have been the ability and the willingness of the people to bear these burdens that the National government has more than once been embarrassed by an excess of revenue. Under these conditions it is not surprising that laxity in making expenditures has been common and that great extravagance and wastefulness have frequently resulted.

National expenditures.

In Congress, appropriation bills, that is, bills providing for the expenditure of public money, may originate in either house; but the important general appropriation bills originate in the House of Representatives. These bills are really framed by the committees to which they

are referred, and are based upon estimates furnished by the various executive departments. For this reason there is some adjustment possible between the financial needs of the government and the amount of taxes levied. But still, the independence of the legislative (or tax creating) and executive (or tax spending) departments of our government makes the fitting of revenue to expenditures a difficult matter, and in practice many errors are committed.

When the ordinary revenues of a government are not sufficient to pay its expenses, recourse must be had to additional taxation, or to borrowing, or to both of these measures at once. The borrowing of money is not essentially different from the levying of taxes, since it but postpones the time when, by taxation, the obligation must be met. This procedure is justifiable because the burden of National expense for certain purposes (as for defence) may well be rested upon more than one generation of citizens. Accordingly, among its other financial powers Congress possesses authority

The public debt.

To borrow money on the credit of the United States. Section 8, clause 2.

Money is borrowed, ordinarily, by the sale of bonds. These are of the same nature as the promissory notes by which individuals obtain loans. National bonds state the promise of the United States to pay a certain amount, at a stated time, with interest. A "registered" bond contains the name of the owner, and this is a matter of record at the Treasury Department. When this bond is transferred, the record must be changed. "Coupon" bonds are usually payable to bearer; they have attached to them a number of coupons equal to the number of interest payments due during the term of the bond.

National bonds.

United States bonds have been issued in various denominations, ranging from twenty dollars to fifty thousand dollars each. The

Kinds of bonds.

term of a bond is not always a fixed number of years. Some of the Civil War bonds were payable at the option of the government after five but within twenty years from the date of issue. These were called "five-twenty's" (5/20's). The bonds issued in 1898, to obtain money for the Spanish War expenses, were "ten-twenty's."

The sale of bonds.

There are two ways of negotiating the sale of bonds. The government may fix its price and sell to all buyers on the same terms. Or, the total amount of money to be raised may be determined, and then, by negotiation with bankers or capitalists, the government may secure the best terms that it can. After being issued, National bonds are either held by individuals and corporations as investments, or they become the objects of trade and speculation, being bought and sold by bankers and brokers on the stock market. Their values fluctuate somewhat and are subject to daily quotation. If a bond sells for its face value it is at "par." Bonds quoted at 117 are at a "premium"; that is, they bring $117 for every $100 of their face value. Those quoted at 98 are at a "discount." When bonds fall due, the government "redeems" them at their face value. Or, they may be continued at a lower rate of interest. A large amount of five per cent. bonds that were due in 1881 were continued, by agreement, at three and one-half per cent., and some that fell due in 1891 were continued at two per cent. Provision is made by law for the purchase of bonds by the government before they are due. For this purpose, the Secretary of the Treasury is authorized to use a portion of the National revenues; this is called a "sinking fund." There is still another way in which the burden of our National debt has been decreased. Soon after the time when the 5/20 Civil War bonds became payable at the option of the government, the holders were given the privilege of choosing whether their bonds should be redeemed, or be exchanged for new ones, of the same amounts, at lower rates of interest. The latter alternative was accepted for many hundreds of millions of our bonds; so the burden of interest was reduced from six per cent. to five, four and one-half, and later to four per cent. This operation was called *refunding* the debt.

Redemption.

Refunding operations.

The public-debt statement.

The "Statement of the Public Debt," issued monthly by the Treasury Department, summarizes our National debt under three heads: the interest-bearing debt, the debt on which interest has ceased since maturity, and the debt bearing no interest. The first of these includes by far the largest part of our National indebt-

edness. For the month of February, 1904, the principal items stood thus:

INTEREST-BEARING DEBT.

Title of Loan.	Rate.	When Issued.	When Redeemable.	Outstanding Feb. 29, 1904.
(1) Consols of 1930.	2 per cent..	1900.	After April 1, 1930....	$542,909,950 00
(2) Loan of 1908–1918 ..	3 per cent..	1898.....	After August 1, 1908...	77,135,360 00
(3) Funded Loan of 1907..	4 per cent..	1877–1879..	After July 1, 1907.....	156,591,500 00
(4) Refunding Certificates	4 per cent..	1879. .		29,990 00
(5) Loan of 1925.....	4 per cent..	1895–1896..	After February 1, 1925.	118,489,900 00
Aggregate of Interest-bearing Debt.....				$895,156,700 00

(1) The term "consols" is borrowed from England, and is used when a number of loans have been consolidated. The finance law of 1900 allowed the exchange of the three, four, and five per cent. bonds for new two per cent. bonds running until 1930.

(2) This was the loan authorized to meet the expenses of the Spanish-American War. These three per cent. bonds were sold at par.

(3) The refunding operations of 1877–1879 account for this item of the debt.

(4) The refunding certificates constituted in reality a round-about way of refunding. See Finance Reports, 1899, cvi.

(5) This loan was made to obtain gold with which to redeem paper-money obligations (see p. 216).

Money has been borrowed by the government in other ways than by selling bonds, as by the issue of certificates of indebtedness and Treasury notes. These were not essentially different from bonds, but they were usually of smaller denominations and ran for shorter terms. In some cases Treasury notes circulated as money; these are not now in existence and should not be confused with the Treasury notes of 1890 (see p. 215). In some aspects, too, the issue of the legal tenders of Civil War times were a means of borrowing money—a sort of forced loan from the people (see pp. 212, 213).

Old Treasury notes.

SUPPLEMENTARY QUESTIONS AND REFERENCES.

1. On the failure of the States to pay their quotas under the Articles of Confederation, see Walker, The Making of the Nation, 8–12; Hart, Formation of the Union, 109–111; Fiske, Critical Period, 104–105, 218–220.

2. The history of our numerous tariff acts may be studied from Taussig, Tariff History of the United States; Walker, The Making of the Nation; Burgess, The Middle Period, and the Civil War and Reconstruction; Hart, Formation of the Union; Wilson, Division and Reunion.

3. The rates of the tariff law now in force are stated in newspaper almanacs. Is this tariff high, low, or moderate in its rates?

4. In the Statistical Abstract will be found the list of items upon which duties and internal-revenue taxes were collected, with the amount yielded by each, for a series of years.

5. What reasons can you assign for the taxation of oleomargarine, mixed flour, and filled cheese?

6. What are proprietary articles? At what rates were stamp taxes levied upon them under the law of 1898? What documentary stamps were used under this law? See newspaper almanacs for 1899 and succeeding years. Also Rev. of R's, 18 : 48–52.

7. How are internal-revenue stamps cancelled?

8. What peculiar conditions made the Whiskey Rebellion possible? Walker, 123–125; Hart, 163–164; Lodge, Alexander Hamilton (American Statesmen series), 180–184.

9. Why should carriages have been taxed in our early history? McMaster, History of the People of the United States, II, 614–615.

10. Make a possible example showing the inequalities that would result from the apportionment of a direct tax among the States according to their population.

11. *a*. What is a deficiency bill? Harrison, This Country of Ours, 58.

b. What are riders to appropriation bills? Harrison, 131–132.

12. For the details of the income-tax law of 1894, see Howe, Taxation and Taxes in the United States under the Internal-Revenue System.

13. Question for debate: Aside from its constitutionality, was the income-tax law of 1894 a just measure? Forum, 17 : 1–13; 14–18; 19 : 48–56; 513–520; 521–531; N. Am. Rev., 160 : 601–606.

14. Statistics answering the following questions may be found in the Annual Reports of the Secretary of the Treasury (Finance Reports); Statistical Abstracts; Abridgments of the President's Message and Documents; Monthly Summaries of Commerce and Finance issued by the Bureau of Statistics, Treasury Department; newspaper almanacs and year-books.

(*a*) What were the revenues of the last fiscal year? The expenditures? The chief items under each head? Do you think that any of the expenditures were extravagant?

(*b*) Make a table representing revenues and expenditures for a series of years. How do you account for fluctuations?

(*c*) Estimate the per capita revenues and expenses for different years.

15. The receipts of the United States government for 1791 were $4,771,342; for the year 1903, $560,396,674. (Finance Reports, 1903, page 1. These figures do not include postal receipts.) Compare the growth in revenues with the growth of the country in population and in wealth. The sources of National revenue, N. Am. Rev., 168 : 297–309.

16. The appropriations made by recent Congresses are as follows:

54th	Congress	$1,045,000,000
55th	"	1,568,000,000
56th	"	1,440,000,000*
57th	"	1,553,000,000

What reasons are there for the growth of public expenditures? Atl. Mo., 87 : 45–55. See also Wright, What the Government Costs, Century Mag., 61 : 433–437.

17. Statistics of the National debt since the foundation

* These figures are larger than those given in the Statistical Abstract, because some items are omitted from the latter; for the appropriations made by the 56th Congress these items were as follows:

	1901.	1902.
Postal service	$113,658,000	$123,952,000
Permanent appropriations	76,503,000	71,358,000
Sinking fund	53,000,000	53,000,000
Postal deficit (estimated)	8,000,000	8,000,000

of the government may be found in the Finance Reports and in newspaper almanacs. Make a chart showing fluctuations of the debt. Account for the important changes in amount.

18. Find in daily papers quotations of the current prices of National bonds. How do you account for differences in their prices? How do the prices of these bonds indicate the Nation's credit? The actual rates of interest that bonds yield may be calculated by the use of "bond-value tables." A set of these tables, accompanied by an explanation, is found in Clow, Introduction to the Study of Commerce, Appendix IV.

CHAPTER XVIII

THE POWER OF CONGRESS OVER COMMERCE

In the conventions that assembled at Alexandria in 1785 and at Annapolis in 1786, commerce was the most important subject discussed. Indeed, it was the necessity for a better method of regulating commerce that brought about these meetings. This problem was one of the difficult questions before the Constitutional Convention, and its solution was reached only by compromise. The clause * embodied in the Constitution was a victory for the advocates of an efficient National government, for Congress was given power

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes. Article I, section 8, clause 3.

In the exercise of this power, Congress was made subject to two limitations.

No tax or duty shall be laid on articles exported from any State. Section 9, clause 5.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another. Section 9, clause 6.

In the regulation of foreign commerce,† Congress has enacted measures for the protection of shipping, by the maintenance of light-houses, buoys, and life-saving

* Clauses 1 and 2 of section 8, Article I, are discussed under National Finances, pp. 182 and 191.

† The exercise of this power was carried to its extreme limit in the embargo act of 1807 and the non-intercourse act of 1809.

stations. The navigation laws of the United States are also enacted under this provision of the Constitution. Regulations are prescribed under which vessels engaged in foreign commerce "enter" and "clear" ports.* Vessels that are "registered" in the United States are entitled to the protection of this government in any part of the world. No vessels are registered except those owned by citizens of the United States, and no foreign-built vessel can be registered.† The vessels of foreign countries may not engage in the coasting trade of this country. Tonnage duties are levied upon both foreign and American vessels. The decline of American shipping (vessels of our registry carry only 10 per cent. of our imports and exports) has given rise to the demand for the repeal of some of the laws mentioned above. The granting of ship subsidies by the National government is another proposed remedy. A bill for this purpose was defeated in the last session of the 56th Congress.

Foreign commerce.

Navigation laws.

By virtue of its power over foreign commerce, Congress regulates immigration into the United States. Besides the Chinese, the following classes are excluded from the country: convicts, anarchists, insane persons, paupers and those liable to become paupers, polygamists, persons having contagious diseases, and laborers under contract or agreement to perform labor or service in the United States; there are excepted from the last class, persons engaged in the professions and skilled laborers employed in the establishment of new industries. The 54th Congress passed a bill (known as

Immigration laws.

*See these terms in the dictionary; also "entry" and "clearance." Notice that clause 6, quoted above, forbids the requirement of these processes in interstate commerce.

†Congress made an exception to this rule when in 1892 it entered to our registry two foreign-built vessels, on consideration that the company owning them build two vessels of the same class in this country.

the Lodge bill) requiring an educational test for immigrants; it was vetoed by President Cleveland.

While power to control foreign and interstate commerce is delegated to Congress, the States still retain authority over the vast volume of business transacted entirely within their limits, which they regulate absolutely by their laws of trade and transportation. It is not easy to say, in every case, just where the limits of State and National authority lie. The United States Courts have decided that the State's power is complete over commerce that begins and ends within the State and does not materially affect the commerce that is interstate or foreign.* If, however, a commodity that is an object of commerce starts in one State, destined for another, its control, throughout its course, lies within the power of Congress.

What is interstate commerce?

The following cases will serve to illustrate the manner in which the line is drawn between National and State powers over interstate commerce. In the State of Iowa, the sale of intoxicating liquors as beverages was prohibited; but the United States Supreme Court held in 1888, that the State could not thereby prevent the sale, *in the original packages*, of liquors that had been shipped into the State. This would be an interference with interstate commerce; the authority of the State did not reach the traffic in imported liquors until the original packages had been broken. But Congress took action favorable to the State by enacting a law which placed imported liquors in the original package under State authority completely.

The "original package" case.

The Supreme Court decided, in 1897, that those provisions of South Carolina's dispensary law† which forbade residents of that State importing liquors for their own use, were an interference with interstate commerce, and, consequently, void.‡

*Cooley, Constitutional Limitations, 351. When the commerce is interstate, and Congress has not undertaken to regulate it, the State may do so; provided, however, that its action tends to aid, not to hamper, this commerce. But an act of Congress will supersede State laws in such a case.

†See p. 104. ‡Wines and Koren, The Liquor Problem, 180.

Commerce by water.

Interstate commerce includes that which is carried on by water, as well as land traffic. So the coast trade between the States lies within the jurisdiction of Congress; also commerce upon navigable rivers. "Wherever a river forms a highway upon which commerce is conducted with foreign nations or between States, it must fall within the control of Congress."* By its "river and harbor bills," Congress appropriates large amounts annually for the improvement of navigable rivers.

Control of commerce by railroads.

Since the development of the great railroad systems of this country, the control of their interstate traffic has become a matter of the first importance. We have already noticed the fact that the railroads are common carriers,† and are consequently subject to legal regulation in the interest of the public. The dependence of the business world upon the interstate railroads increased as the practice of consolidating many short lines into a few great systems was developed. These systems, having the greater part of all interstate commerce within their control, began to unite, by making agreements among themselves, for the purpose of carrying out certain policies. Then evils appeared from which the public sought relief by an appeal to the power of Congress over interstate commerce.

Excessive rates.

One of the evils consisted in the fixing of excessive rates for freight and passenger traffic; railroads that had formerly been in competition with each other agreed to maintain these rates. But it was difficult to secure adherence to these agreements, so the system of "pooling" was resorted to.‡ Rates were fixed by each company independently, but their earnings were all turned into a com-

* Cooley, Constitutional Limitations, 728. Upon this subject many complicated cases have arisen. No attempt is made here to summarize them.

† See chapter on Police Powers, p. 100.

‡ From the stand-point of the railroads it seemed necessary to avoid, in some way, the disastrous results of their "rate wars." These were in many cases injurious to public interests also.

mon pool and then distributed among the companies concerned in certain proportions previously agreed upon. Under this plan no member of the pool was able to increase its earnings by lowering charges and thus securing greater patronage. Consequently, the public suffered, as previously, from exorbitant charges. In another form of the pool, the freight itself was divided among the railroads at competitive points, in certain fixed proportions. Pooling.

The practice of making discriminations was another serious evil. When lower rates were given to some patrons than to others, the former had an advantage which enabled them to outbid their rivals in business. There was discrimination between places as well as between individuals. Goods were carried to certain cities at lower rates than were charged from the same starting point to other cities at the same or even less distances. The unfairness of such a practice is apparent; they caused not only real hardship, but sometimes actual business disaster. Discriminations.

As a means of curing these evils, Congress enacted, in 1887, the Interstate Commerce Act, applying to all common carriers engaged in transporting freight and passengers from State to State. We shall briefly summarize its provisions. The Interstate Commerce Law.

1. All charges must be "just and reasonable." 2. Pooling agreements are prohibited. 3. It is unlawful to make discriminations by giving to any particular person, corporation, or locality an unreasonable advantage over others. This includes the granting of passes to others than railroad employees. 4. The "long and short haul" clause makes it unlawful for a common carrier to charge more for the transportation of passengers, or the same kind of freight, over a shorter than a longer distance; provided, however, that the transportation is "under substantially similar circumstances and conditions," over the same line, and in the same direction. 5. All rates must be published and posted where they can be consulted by any person. 6. The Interstate Commerce Commission was created to supervise the administration of the law.

The Commission consists of five persons, appointed by the President and confirmed by the Senate. It receives complaints and conducts investigations and hearings. The Commission receives testimony and makes decisions upon the cases presented to it; but it lacks the power to enforce observance of the law by the infliction of penalties. This can only be done by the ordinary legal procedures resulting in the conviction of the accused party in a court. Since this is a difficult matter to accomplish, the railroads have persistently violated the law in many ways. They have not maintained their published rates, but have been guilty of discrimination by "rate-cutting, making rebates, underbilling, false weighing, false classification, and endless other devices." * In fact, the law is not enforced, and the Commission, in their Report dated January 15, 1900, say that "the present law cannot be properly enforced." † Yet the influence of the Commission has been considerable. Partly for this reason and also because of the voluntary action of railroad authorities, the evils of interstate commerce have been materially lessened since the enactment of the law.

The Interstate Commerce Commission.

Within recent years the control of trusts by both State and National authorities has become a matter of considerable importance. A trust is a combination of corporations uniting to secure economy in the administration of an industry and to avoid some of the losses due to competitive methods. In the earlier forms of trusts, corporations engaged in the same business surrendered their powers to a board of directors, or trustees. But this form of organization was declared illegal in several States, so a trust is generally organized at the present time as a new corporation, owning either

Trusts.

* Seventh Annual Report of the Interstate Commerce Commission, 1893, p. 6.

† Thirteenth Annual Report, 1899, p. 5.

the stock or the property of its constituent members. The trust secures a charter in a State where the conditions are favorable* and then may carry on business in any State of the Union. Since those who form a trust hope to secure control of the market for the commodity produced or handled, their action frequently tends to create a monopoly. Now, the common law forbids any unreasonable restraint of trade; and in a majority of the States, statutes have been enacted, or constitutional provisions adopted, specifically prohibiting such combinations as trusts when they tend to destroy competition, control prices, or limit production.

State control.

Congress has also taken action in this matter. The Anti-trust Law of 1890 makes illegal any combination in restraint of trade or commerce among the several States or with foreign nations. The enforcement of this law has given rise to many interesting cases.

The Federal Anti-trust Law.

In connection with the Chicago strike of 1894, the Supreme Court held that the Anti-trust Law forbade not only combinations of capital, but combinations of labor as well, if they were in restraint of interstate commerce.† It has been decided that a trust engaged in the business of refining sugar did not fall within the scope of this law, since the manufacturing process in question did not constitute commerce.‡ Again, an agreement among the railroad companies of the Trans-Missouri Freight Association to establish and maintain rates was considered a violation of the law of 1890, because this was a contract in restraint of interstate commerce (1897). Another decision, made in 1899, declared illegal a combination of iron pipe manufacturers § who had made an agreement not to compete with each other; but their action was illegal only as to the sale of pipe in interstate business.

* The laws of New Jersey and a few other States facilitate the formation of corporations of this nature. Most of the trusts formed in 1899, with a total capitalization of three billion dollars, were incorporated in New Jersey.

† The case of the United States *vs.* Debs et al.

‡ Case against American Sugar Refining Company.

§ The Addyston Pipe and Steel Company.

The most important decision made by the Supreme Court upon this subject was announced (March, 1904) in the so-called "merger" case. The stockholders of the Northern Pacific and Great Northern Railroad companies, having practically parallel lines of road, had organized a new corporation, the Northern Securities Company, for holding the shares of these two companies. Thus, the stockholders of these two competing companies disappeared, as such, for the moment, but immediately reappeared as stockholders of the holding company, which was thereafter to be managed so that no competition would exist. This arrangement was brought about by some of the leading railroad financiers of the country. The Supreme Court decided that the Northern Securities Company was a trust, or a combination in restraint of interstate commerce, and it was therefore declared to be illegal.

The 57th Congress enacted several interesting laws relating to trusts. (1) The sum of $500,000 was appropriated to defray the cost of prosecuting cases against violators of the anti-trust law. (2) The "anti-rebate law" provided punishment for the receiver as well as for the giver of rebates. (3) The Bureau of Corporations in the Department of Commerce was given the special function of investigating the records of corporations engaged in interstate business, with a view to checking violations of the interstate commerce and anti-trust laws.

Supplementary Questions and References.

1. Should the United States adopt the policy of granting ship subsidies? Rev. of R's, 21 : 325–326; 326–328; 23 : 197–203; N. Am. Rev., 156 : 398–407; 163 : 470–478. The ship subsidies of other countries are displayed in United States Consular Reports, No. 112, Jan. 1890.

2. How is it apparent that the powers of Congress "keep pace with the progress of the country"? Cooley, Principles of Constitutional Law, 64–65.

3. For statements of cases involving the control of interstate commerce, see Cooley, 69–75.

4. River and Harbor Bills, N. Am. Rev., 158 : 343–352.

5. On the powers of the Interstate Commerce Commission, see N. Am. Rev., 167 : 543–557; 168 : 62–76; Pop. Sci. Mo., 56 : 614–616; Forum, 17 : 207–216; 27 : 223–236; 551–556. Outlook, 64 : 626–628.

6. What are the grounds for opposition to railroad pooling? N. Am. Rev., 168 : 321–335; 506–509.

7. The economic aspects of trusts are treated in Jenks, The Trust Problem; Ely, Trusts and Monopolies; Wright, Practical Sociology, 411–413. Also, Bulletin of the Department of Labor, No. 29, July, 1900; Hadley, The Good and Evil of Industrial Combinations, Atl. Mo., 79 : 377–385. A list of trusts is given in Rev. of R's, 19 : 675–678; Hadley, The Formation and Control of Trusts, Scribner's Mag., 26 : 604–610; The Danger in Trusts, Century, 38 : 152–153; Industrial and Railroad Consolidation, N. Am. Rev., 172 : 641–700 (a group of articles).

8. State control of trusts; Forum, 24 : 107–118; Atl., Mo., 85 : 47–53; Nation, 71 : 4–5; N. Am. Rev., 168 : 210–217; 169 : 210–217; Arena, 22 : 312–319; Outlook, 62 : 879–881.

9. The National Anti-trust Law. Forum, 26 : 452–458; 23 : 298–307; 28 : 732–736; N. Am. Rev., 169 : 375–398; Nation, 70 : 431–432.

10. On Chinese exclusion, see N. Am. Rev., 166 : 85–97; 226-233; 171 : 214–220.

11. Should more restrictions be laid upon European immigration? N. Am. Rev., 152 : 27–36; 154 : 424–438; 158 : 494–499; 162 : 649–657; 163 : 252–254; 164 : 526–536; 165 : 393–402; Outlook, 55 : 721–722; 58 : 508–509; 59 : 951; 60 : 990; Arena, 18 : 788–801; Pop. Sci. Mo., 49 : 625–630; 50 : 841–843; Atl. Mo., 71 : 646–655; 75 : 345–353; 77 : 822–829; Wright, Practical Sociology, 46–55; Forum, 30 : 555–567; Rev. of R's, 24 : 723–724; Century Mag., 67 : 466–473.

CHAPTER XIX

MONEY OF THE UNITED STATES

I. Metal Money or Coin.

Whenever men trade or exchange commodities they find some form of money very convenient, if not really necessary. A variety of things have served as money among peoples in different stages of civilization. Gold and silver have become the chief money metals of civilized countries on account of their high value, and certain other characteristics. The function of coining money has been assumed by governments because in this way only can uniformity in the size and composition of coins be secured. The government stamp becomes a guarantee of the value of a coin when otherwise each might have to be weighed and tested before it could be accepted. Congress has been vested with the power

Article I, section 8, clause 5. *To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.*

Clause 6. *To provide for the punishment of counterfeiting the securities and current coin of the United States.*

The government coins money at its mints, which are located at Philadelphia (established in 1792), Denver, New Orleans, and San Francisco. Gold or silver ore must first be refined before it is sent to the mint as *bullion*. Here it is assayed * to determine its purity. The pure metal is too soft for use as money, so an alloy of

The mints.

* Assay offices are also maintained at New York, St. Louis, Deadwood, Helena, Boisé, Seattle, and Charlotte, N. C.

copper is added in the making of gold coins and silver dollars. In the "standard" metals thus produced the alloy is one-tenth of the whole; that is, the metal is nine-tenths (or .900) "fine."

In the process of minting, the standard metal is first rolled into strips of the thickness of the coin. From these strips round pieces are cut by heavy machinery. The weight of each piece is tested and when found accurate it goes to another machine, from which it comes with the edge slightly raised on both sides. This device decreases the wear on the faces of the coin. In the next operation, the disk of gold or silver is subjected to immense pressure between two engraved dies; in this way the proper inscriptions are stamped upon its faces. At the same time the edge of the coin is milled.

Process of coining.

The money of a country is not only the common medium of exchange, ordinarily accepted at its face value; it is also a standard of value in terms of which all commodities are measured. By its use all trade is greatly facilitated and rendered secure. With the same object in view every government declares certain kinds of money to be "legal tender," *i.e.*, money that must be accepted by a creditor in payment of a debt. This does not mean that one must sell his goods for the legal tender money; but if a debt has been contracted without agreement as to the kind of money with which it is to be paid, the debtor may offer the legal tender in payment and it must be accepted.

Legal tender.

A government may pursue one of two distinct policies toward the coinage of a certain metal. (1) It may agree to coin all the bullion of that metal that may be brought to the mints by individuals; this is *free* * *coinage*. (2)

Free coinage.

* The word *free* means *unlimited*. It has no reference to the charge for coinage mentioned on p. 209. The definition of free coinage given above states its meaning as the phrase is commonly used. The following

The government may limit the amount of bullion that will be coined; this may be called *limited coinage.* Under free coinage of any metal the government makes no effort to control the amount of bullion which will be coined; it coins "on private account" all the bullion brought to its mint. Under limited coinage a certain amount of the bullion is coined "on government account."

Since the first coinage act of our government (1792) there has been free coinage of gold. There was also free coinage of silver until 1873. Because during this time there was free coinage of both metals, and both gold and silver dollars were full legal tender, we had nominally, at least, *bimetallism* or a *double standard.* The law of 1873, by stopping the coinage of silver dollars, brought about the single gold standard.* After 1878 there was limited silver coinage until the purchase of silver bullion was discontinued in 1893.

Bimetallism.

Below is a list of the coins now made at the mints of the United States.

Coins of the United States.

Gold.	Silver.
Double eagle	One dollar
Eagle	Half dollar
Half eagle	Quarter dollar
Quarter eagle	Dime

Minor coins, the nickel and one cent piece.

The "standard" coins of each kind are of course the gold dollar and the silver dollar. The weight of the pure metal in the gold dollar is fixed by law at 23.22

The ratio.

is a more accurate definition: free coinage contemplates the coining of all the bullion brought to the mints, either gratuitously or with a deduction not to exceed the actual expenses of coinage.

*In reality the country had been on a gold basis for a number of years. The number of silver dollars coined between 1834 and 1873 was only 6,525,000.

grains (Troy weight). In a silver dollar, the pure metal weighs 371.25 grains, or 15.988+ times as much as in the gold dollar. Hence we say that the ratio of our standard coins is 15.988+ to 1, or approximately 16 : 1. This is called the *mint ratio.* Since our coins are .9 fine, the total weights are 25.8 grains for the gold dollar and 412.5 grains for the silver dollar.

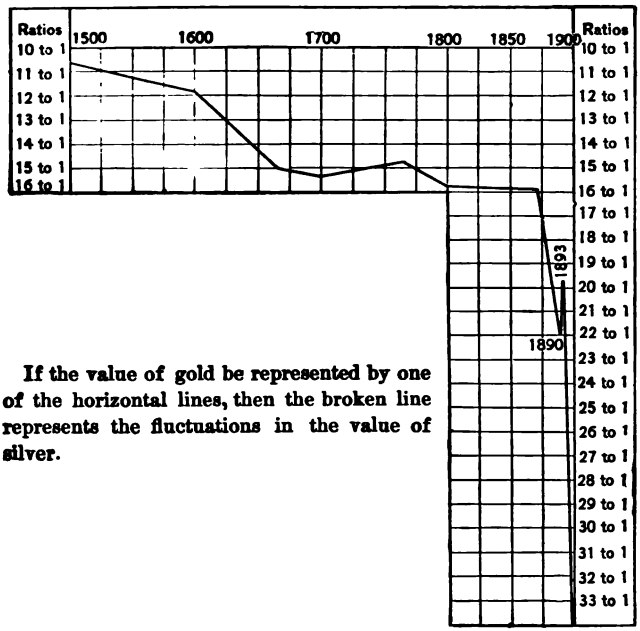
Any one who has gold may take it to the mint and receive in exchange exactly the same amount of gold in gold coin. For the alloy which has been added he will pay a "mint charge" of two cents per ounce. It is evident, therefore, that 23.22 grains of gold are worth exactly $1.00 at the mint; this fixes the price of gold everywhere and under all conditions.

With silver the case is different. In a silver dollar 371.25 grains of pure silver pass as $1.00, but their intrinsic value may be less. You may find in the daily papers, market quotations of the price of silver bars, as of wheat and other products. In April, 1901, silver was quoted at 60 cents an ounce; consequently, for a dollar one might buy 800 grains of silver on the market. Now since one can buy only 23.22 grains of gold for a dollar, the market ratio of gold and silver was 34.45+: 1. A simple calculation will show that at this value the silver in a silver dollar was worth less than 46½ cents. If now the government should purchase silver at the market price and coin it into dollars, there would be a profit of 53½ cents for each dollar coined. This profit is called *seigniorage,* though this was not the original meaning of the term.

Market ratio.

Before 1873, when we had free coinage of both metals, the mint and market ratios were very nearly the same. Certain causes (some say the act of 1873 itself, others say the enormously increased production of silver) have brought about the decline in the value of

silver. How great this decline has been is evident from the accompanying chart:



If the value of gold be represented by one of the horizontal lines, then the broken line represents the fluctuations in the value of silver.

Since the decline became noticeable there has been agitation in favor of resuming the free coinage of silver at the original ratio (16:1). It is this demand for "free silver" which furnishes the key to the history of our silver coinage since 1873 and to the discussions over money in recent political campaigns. This question is involved in the larger one of *bimetallism*—a deep and intricate economic problem upon both sides of which eminent authorities are arrayed. We cannot enter into this discussion, but an outline of recent silver legislation is necessary to the understanding of our present monetary system.

The silver question.

As already stated, in 1873 the silver dollar was dropped from the list of coins to be minted. Its legal tender quality was not altered until, by a law of 1874, this was limited to amounts of five dollars or less. In 1878 Congress passed the Bland act, directing the Secretary of the Treasury to purchase from $2,000,000 to $4,000,000 worth of silver bullion each month. This was to be coined into silver dollars, which once more became full legal tender. The silver purchased under this act was coined into $378,000,000.

Law of 1878.

By the Sherman act of 1890 the Bland act was repealed; the Secretary of the Treasury was required to purchase four and one-half million ounces of silver bullion monthly (or so much thereof as might be offered) at the market price, but not to exceed $1.29 an ounce. This bullion was to be paid for by a new kind of paper money called *Treasury notes of 1890*. For one year two million ounces of this bullion were to be coined each month; after that time only enough was to be coined to redeem the Treasury notes as they might be returned to the Treasury. When redeemed in silver the Treasury notes are cancelled or destroyed. That clause of this act which required the purchase of silver was repealed by Congress in 1893 under circumstances to be described hereafter. Since that date no silver bullion has been purchased by the government, for the coinage of silver dollars. Since July 1, 1891, silver dollars have been coined only in amounts sufficient to redeem Treasury notes.

Repeal of purchase clause in 1893.

The silver coins of denominations less than one dollar are called subsidiary coins. The silver half-dollar weighs only 192 grains and is therefore lighter proportionately than the silver dollar. The quarter and ten cent piece are correspondingly reduced in weight. They are legal tender only in sums of ten dollars or less. The five cent piece (nickel) weighs 77.16 grains and is composed of 75 per cent. copper and 25 per cent. nickel. The one cent piece

Subsidiary silver.

ingly, the law of 1875 authorized the Secretary of the Treasury to obtain gold by selling bonds. Just before January 1, 1879, the notes once more passed at face value, and but few were presented for redemption. The amount outstanding was not decreased, for instead of cancelling those that were redeemed the Secretary was obliged by law to *re-issue* them in making payments from the Treasury. This caused trouble in later years.

The government was obliged to pay the interest on its Civil War bonds in gold; for otherwise they would have fallen greatly in value. The United States notes were therefore made legal tender for all debts except duties on imports and interest on the public debt. The gold received from customs duties was the source of supply from which interest payments were made.

There can be little doubt that the framers of the Constitution never intended that Congress should have the right to declare anything but gold and silver legal tender. The Constitutionality of the laws that authorized the "legal tenders" was therefore one of the most important questions ever submitted to the Supreme Court. The final decision* was in favor of the right of Congress to exercise this power. The Constitutional basis of this right is implied by some from the power to levy and carry on war; by others from the power to borrow money; by still others from the power to coin money. The court rested its decision finally upon the ground that this power is "one of the powers belonging to sovereignty in other civilized nations," and that as it is not expressly withheld by the Constitution, it is by necessary implication vested in Congress in connection with the powers over the currency expressly granted.†

Constitutionality of legal tenders.

Let us now notice two kinds of our paper money that

* Rendered in 1884. Julliard *vs.* Greenman. 110 U. S., 421.

† Cooley, Principles of Constitutional Law, 83.

are quite similar. When Congress, by the Bland act of 1878, authorized the coinage of silver dollars, it provided also for the silver certificates. Silver dollars are bulky and inconvenient to handle. Any holder of them may deposit them in the United States Treasury and receive in exchange silver certificates. The silver dollars remain in the Treasury.

Silver certificates.

Gold certificates are issued upon the same plan. These two kinds of paper money are therefore merely certificates of deposit. To redeem them the division of redemption of the Treasury holds specie in amounts exactly corresponding to the certificates outstanding.

Gold certificates.

The circumstances under which the Treasury notes of 1890 were issued have been described. These notes were made redeemable *in coin;* that is, in either gold or silver, at the option of the government. In the years immediately preceding the financial panic of 1893 there was a great scarcity of gold in the money markets of this country. It was necessary to ship much of our gold abroad, and great quantities were hoarded by banks and by individuals. The government had pledged itself to redeem the United States notes in gold, and it maintained for this purpose a "gold reserve" which had never been allowed to fall below $100,000,000. When gold became scarce, bankers brought these notes to the Treasury for redemption in such amounts as to threaten the exhaustion of the reserve. The law requiring the re-issuance of the notes made matters worse, for there was literally no limit to the amount that might be presented for redemption.

Treasury notes of 1890.

The Treasury notes of 1890 were redeemable in either gold or silver, but the law of 1890 had declared that it was "the established policy of the United States to maintain the two metals on a parity with each other, upon the present legal ratio (15.988 to 1) or such ratio

as may be provided by law." Now, in the judgment of the administration (Mr. Cleveland was then President) the refusal to redeem these notes in gold, when gold was demanded, would at once destroy the parity of the two kinds of money; that is, gold would rise to a premium, silver money would depreciate, the silver dollar would fall perhaps to its intrinsic value, and the United States would be on a silver basis. Consequently, it was decided to redeem the Treasury notes in gold; the amount of these notes was about $150,000,000, and this mass of money was added to the legal tenders as a possible drain upon the gold reserve. Since, through the purchase of silver, the amount of Treasury notes was constantly increasing, a special session of Congress repealed (November 1, 1893) the purchase clause of the Sherman act. Further, as the gold reserve decreased below $100,000,000, it became necessary, if the government's policy was to be maintained, to buy gold by the sale of bonds. This had been authorized by the act of 1875 already mentioned (see pp. 213, 214). The following bond issues were therefore made:*

Crisis of 1893.

Date.	Amount.	Time.	Rate.
1894 February	$50,000,000	10 years	5 per cent.
" November.....	50,000,000	10 "	5 " "
1895 February.....	62,315,400	30 "	4 " "
1896 January.....	100,000,000	30 "	4 " "

The public debt was thus increased by $262,315,400. The foregoing history reveals the haphazard and unscientific character of our monetary system. It has this character because after 1878 our government adopted a half-way policy: in practice we had neither bimetallism nor the single gold standard. It was upon this issue that the election of 1896 turned. Hence the Republican

* These bonds appear in the Public Debt Statement (see p. 193); the greater part of the five per cents have been exchanged for the new two per cents.

policy of Mr. McKinley's administration resulted in the financial law of 1900. This law provides for the maintenance of the single gold standard. The gold dollar is the unit of value, and all other kinds of United States money are to be maintained at a parity of value with this standard. All bonds of the United States as well as the United States notes and the Treasury notes of 1890 are redeemable in gold. Law of 1900.

To insure the redemption of the notes a reserve fund of $150,000,000 in gold is maintained. The United States notes redeemed in gold from this reserve are not re-issued directly, but they are exchanged for gold from the general fund of the Treasury. From the general fund they will get back into circulation. In this way the reserve will ordinarily be maintained. If it should fall below $100,000,000, gold may be purchased, as in former years, by the sale of bonds.

The Treasury notes of 1890 are gradually to be retired, their places being taken by silver certificates. To facilitate these currency transactions, there are established in the Treasury Department two new divisions—one of Issues and the other of Redemptions.

Four kinds of paper money have been described; there remains the fifth kind, National bank notes. National banks are under the control of a bureau in the Treasury Department, having for its head the Comptroller of the Currency. A National bank is organized in much the same way as other corporations, by any number of persons, not less than five. The minimum amount of capital stock a bank may have depends upon the size of the place where the bank is located.* National bank system.

* Minimum Capital Stock.	Population.
$25,000	3,000 or less.
$50,000	3,000 to 6,000.
$100,000	6,000 to 50,000.
$200,000	Over 50,000.

Upon the basis of its capital stock the bank performs the ordinary banking functions; that is, it makes loans, discounts notes, buys and sells exchange. In addition to these functions National banks have another not at present exercised by other banks—they issue National bank notes for circulation as money of the United States. The entire business of these banks is conducted under regulations of the National law, and they are subject to inspection by National officers.

When a National bank is organized it must invest a sum of money equal to at least one-fourth of its capital in United States bonds. These may be purchased at any time from a broker. The bank must deposit them in the Treasury of the United States; but they are still the property of the bank and it receives the interest from them. The bank will then receive from the Comptroller of the Currency, National bank notes equal in amount to the par value of the bonds deposited. The president and the cashier of the bank sign each note, and they may then be loaned or paid out for any purpose in the ordinary course of business. The bonds constitute the security for these notes. A National bank may fail; that is, its depositors may never receive back their money; but the holders of National bank notes will lose nothing so long as United States bonds are good security. For if the bank cannot redeem its notes in lawful money according to its promise, the Comptroller of the Currency will sell the bank's bonds and thus obtain money with which to redeem them. This is the reason why we never hesitate to receive one of these notes even though the responsible officials of the bank may be entirely unknown to us.

Deposit of bonds.

The advantage that National banks seem to have in being able to draw double interest on the amount invested in bonds is much lessened by the following facts: (1) Banks must have a deposit

In the United States Treasury for the redemption of their notes, which bears no interest. (2) Their circulation is taxed one-half per cent. (3) The bonds are above par, and consequently the actual rate of interest is less than the nominal rate. (4) Other fees and charges are exacted by the government. For these reasons, and because National banks are subject to stricter inspection than banks organized under the laws of most states, private and state banks are constantly being organized in competition with them. The number of National banks in July, 1901, was 4,178.

National banks and interest on bonds.

The following kinds of money are now full legal tender: all gold coins, silver dollars, United States notes (with the exceptions noted), and Treasury notes of 1890. The gold and silver certificates and National bank notes are not legal tender.

The clause by virtue of which Congress possesses power "to coin money" also gives it authority "to fix the standard of weights and measures." It was only during the last session of the 56th Congress, in 1901, that a law was enacted giving full effect to this grant of power. The only standard previously adopted by law was the English Troy pound; all other measurements of weight, distance, and capacity were based upon standards fixed by European governments. Standard thermometers and measures based on the metric system came from France, while standards of electrical measurement were German. Millions of dollars were spent annually by manufacturers, scientists, and others in obtaining standardized instruments from abroad. A law of 1901 established a National Standardizing Bureau in the Treasury Department, and appropriated money for a laboratory at which the standards used in all the applied sciences will be kept.* A director, a physicist, a chemist, and their assistants will exercise the functions of the Bureau for the National, State, and municipal governments, for educational institutions, and for individuals engaged in pursuits requiring the use of standardized instruments.

Standard of weights and measures.

* This bureau, in 1903, was transferred to the Department of Commerce and Labor.

SUPPLEMENTARY QUESTIONS AND REFERENCES.

1. What things have been used as money besides metals? What qualities of gold and silver have made them the common money metals? Ely, Outlines of Economics, 142–143; Laughlin, Elements of Political Economy, 69–72; Walker, Political Economy, 102–104; Encyclopedia articles on money and coinage.

2. *a.* Weigh a five dollar gold piece on a druggist's scales; weigh five silver dollars. What is the ratio of these weights?

b. Put a silver dollar in one side of a balance, and one dollar in subsidiary silver coins in the other. What is the result? Why? See an account of the monetary laws of 1853. (References in question 14.)

c. Balance an old coin against a new one of the same denomination. Is the former worth less than the latter? Coins become abraded and yet pass at face value except in international trade. Coins shipped abroad are weighed to ascertain their true value.

3. The present ratio was fixed in 1837. By the law of 1792 the gold dollar contained 24.75 grains of pure metal, and the silver dollar 371.25 grains. What was the mint ratio at that time?

4. Calculate the ratio between the total weights of the gold and silver dollars. Calculate the total and fine weights of the other gold and silver coins.

5. What is the value of an ounce of gold? Of a pound? If you are "worth your weight in gold" what is your value?

6. What is the present market value of silver? How many grains can you buy for $1? What is the market ratio of gold and silver? What is the value of the silver in a silver dollar?

7. No nation has at present a bimetallic monetary system. What nations have the single silver standard? The gold standard? What is meant by international bimetallism? (The history of the Latin Monetary Union furnishes the best example of this.) Encyclopedia articles on bi-

metallism; Laughlin, chapter 27; Walker, pp. 345–355; Bullock, Introduction to the Study of Economics, 289–300; Andrews, An Honest Dollar, chapter 2.

8. Under the act of 1890 the government purchased 168,674,682 ounces of bullion for $155,931,002. What was the average market price of silver? What ratio does that represent?

9. Can you explain fluctuations in the relative values of gold and silver in the chart on p. 210? Construct a chart in which the value of silver is represented by a straight line, and the value of gold by a broken line. Does one chart tell the truth more accurately than the other?

10. Explain fluctuations in the value of United States notes (chart, p. 213). Construct a chart representing the premium on gold by a broken line.

11. The space required to store 1,000,000 silver dollars is 250 cubic feet. On September 30, 1903, there were in the Treasury 482,442,538 silver dollars. How much space was necessary for their storage?

12. On October 1, 1903, the total amount of money in circulation in the United States was $2,404,617,069. The population was estimated at 80,831,000. Calculate the per capita circulation. How do these amounts compare with the *per capita* in other countries? See newspaper almanacs.

13. What positions were taken on the money question by the political parties in the last Presidential campaign?

14. The following books contain accounts of our monetary history: Knox, United States Notes; White, Money and Banking; Noyes, Thirty Years of American Finance; Taussig, The Silver Situation in the United States; Andrews, An Honest Dollar; Bullock, Introduction to the Study of Economics; Laughlin, Political Economy; Report of the Secretary of the Treasury, in Abridgment of President's Message and Documents, 1895–96, 187–246. (A valuable account, containing several official reports.)

15. Statistics of coinage, value of silver, production of precious metals, etc., may be found in the Statistical Abstract; Finance Reports; Treasury Department Circulars, No. 123 and No. 143; Reports of the Secretary of the Treasury in Abridgment of the President's Message and Documents.

CHAPTER XX

OTHER GENERAL POWERS OF CONGRESS

I. Power of Naturalization.

Naturalization is the process by which a foreigner becomes a citizen. The first section of the XIVth Amendment declares the following classes to be citizens: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside." The Dred Scott Decision, given by the United States Supreme Court in 1857, was based on the principle that a slave who was the descendant of a slave could not become a citizen according to the interpretation of the Constitution. But the Civil Rights Act of 1866 declared that these persons were entitled to the rights of citizenship. Could this Act of Congress be enforced so long as the decision of the Supreme Court was unreversed? All such complications were settled therefore by the definition of citizenship in the Amendment. The section has been interpreted to apply to "white persons and persons of African descent." An Act of Congress in 1882 expressly prohibits the naturalization of Chinamen. Naturalization has also been denied to natives of Japan and of Burmah. But the Supreme Court has decided that a child born in the United States of Chinese parents is a citizen.*

Who are citizens?

Previous to the adoption of the Constitution, the individual states had the right to determine their own

* United States *vs.* Wong Kim Ark, 169 U. S., 649.

rules of naturalization. Much confusion thus arose because of the different requirements in the various States, and with little discussion the Constitutional Convention declared that:

Section 8, clause 4.

Congress shall have the power to establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States.

The number of years of residence in the United States required before an alien might be admitted to citizenship varied until 1802 when the present rule of five years was adopted. A foreigner who has reached the age of eighteen years must, at least two years before admission to citizenship, appear before a court of record having common law jurisdiction, or before the clerk of such a court, and declare upon oath that it is *bona fide* his intention to become a citizen of the United States and to renounce forever all allegiance to any government formerly having jurisdiction over him. If he has borne any title of nobility he must renounce it. This declaration is then recorded and the clerk furnishes the applicant with a certified copy which is sometimes called his "first papers."

How an alien becomes a citizen.

Declaration of intention.

After two years from the declaration of intention, provided he has resided continuously within the United States at least five years and within the State or territory where the court is held at least one year, he must appear in open court and declare on oath that he will support the Constitution of the United States and absolutely "renounce and abjure all allegiance and fidelity to every foreign prince, potentate, State, or sovereignty whatsoever." Two witnesses must testify to his term of residence and declare that during the time "he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and

Certificate of naturalization.

happiness of the same." These facts are recorded and he is granted a certificate of naturalization. His wife and children under twenty-one years of age become citizens at the same time.

Status of minors.

The children of naturalized citizens born abroad are regarded as citizens. Children of foreigners born in this country and residing here may elect their allegiance. Any alien coming to the United States before he is eighteen years old may be admitted to full citizenship, upon the declaration of his intention, after he has resided in the United States five years and is twenty-one years of age. He must be able to prove a good moral character by two witnesses and satisfy the court that, for the two years next preceding, it has been his *bona fide* intention to become a citizen.

Expatriation.

The United States has entered into treaty relations with certain nations, among them, Great Britain, Germany, Austria, Mexico, which provide that one may renounce allegiance to, or be expatriated from, the nation of which he is a subject, as follows : "Renewal of domicile in the mother country with the intent not to return, and two years residence is presumptive evidence of such intent, shall work renewal of the former allegiance." Some of these treaties also provide that when a subject has left his country to avoid military service, "the right to exact which was complete before his departure, such service may be enforced on his return in spite of intervening naturalization."

Bankrupt laws.

A bankrupt law provides for the division of the property of an insolvent debtor among his creditors and also frees him from any further *legal* obligation to pay the debts which are not met in this manner. Four bankrupt laws have been passed by Congress, those of the years 1802, 1840, 1867, and 1898. They were passed for the purpose of granting relief to those persons who have become involved, largely because of the general depression in trade throughout the country for a few

years previous to their enactment. The law of 1802 was repealed in 1803; that of 1841, in 1843; while that of 1867 was in force eleven years. It has been urged that the bankrupt law of 1898, after certain modifications, should be made permanent. There has also been some agitation in favor of an international agreement on the subject of bankruptcy.

The United States District Courts have jurisdiction over bankruptcy cases according to the law of July 1, 1898. It provides also that any person who owes debts, except a corporation, may on his own motion, before such a Court, become a "voluntary" bankrupt. Any person or company, except a National bank or a bank organized under State or Territorial laws, owing debts of $1,000 and over may be forced by creditors into "involuntary" bankruptcy after an impartial trial. It was estimated that within a period of less than three years after the passage of this law some 40,000 persons became voluntary bankrupts, and debts of over $600,000,000 were thus cancelled.

Law of 1898.

It is, however, to be understood that although the States still retain the power to pass insolvent and bankrupt laws, that power is not unlimited, as it was before the Constitution. It does not extend to the passing of insolvent or bankrupt acts which shall discharge the obligation of antecedent contracts. It can discharge such contracts only as are made within the State between citizens of the same State. It does not extend to contracts made with a citizen of another State within the State nor to any contracts made in other States. During the existence of a National bankruptcy law, State laws that might be in conflict with it are suspended.

State bankrupt laws. Story, Commentaries, § 1115.

II. The Postal System of the United States.

No part of our government better indicates the great rapidity of our National development than the progress of the post-office system. An act of Congress of 1782 directed that a mail should be carried at least once in each week from one office to another. In 1790, there were seventy-five post-offices in the United States; postage to the amount of $37,925 was collected, and the post-

Development of the postal system.

roads extended over 1,875 miles. In 1901 there were 77,000 post-offices with employees numbering over 200,000. The receipts amounted to $112,000,000, and the mail routes on railroads alone extended over 182,000 miles. The total extent of mail routes was some 512,000 miles, and the number of pieces of mail matter handled was 7,424,390,329.

Congress, under the Confederation, was given the power of "establishing and regulating post-offices from one State to another." After a brief consideration in the Constitutional Convention it was agreed that

Section 8, clause 7.

Congress shall have the power to establish post-offices and post-roads.

Hamilton, in "The Federalist," gives to the question but one paragraph, in which he says: "The power of establishing post-roads must in every view be a harmless power; and may, perhaps, by judicious management, become productive of great public convenience. Nothing which tends to facilitate the intercourse between the States can be deemed unworthy of the public care." Said Postmaster-General Smith in 1899: "The postal establishment of the United States is the greatest business concern in the world. It handles more pieces, employs more men, spends more money, brings more revenue, uses more agencies, reaches more homes, involves more details, and touches more interests than any other human organization, public or private, governmental or corporate."

"The Federalist," Hamilton, ed., 337.

Classes of mail matter and rates.

There are four classes of domestic mail matter, as follows: First class—letters, postal-cards, or other wholly or partly written matter and all matter closed against inspection. The rates of postage (postal-cards and "drop" letters mailed at non-delivery offices, excepted) are two cents per ounce or fraction thereof. Second class—newspapers and publications issued at stated intervals as often as four times a year, bearing a date of issue and numbered consecu-

tively. When sent by the publishers or news-agents the rate is one cent a pound. For other persons the rate is one cent for four ounces. Third class—books, proof-sheets accompanied by manuscript copy, and seeds may be sent at the rate of one cent for two ounces. Fourth class—all merchandise not included in the other classes and limited to four pound packages. The rate is one cent an ounce. All mail matter may be registered by the payment of eight cents in addition to the regular postage. A "special delivery" ten cent stamp in addition to the regular postage entitles any mailable matter to immediate delivery by special messenger, upon arrival at the post-office to which it is addressed.

Money-orders may be procured at "money-order" offices upon payment of a small sum. Many persons use the post-office as a bank of deposit, making the money-orders payable to themselves. Bills have been before Congress for the establishment of a Postal Savings Bank system in connection with post-offices. It is proposed that small sums be taken on deposit and a low rate of interest paid, the funds being invested in government bonds. Such systems are in operation in many European countries, the British colonies, and Japan. A similar institution existed in the Hawaiian Islands previous to their annexation to the United States.

Money-orders.

Postal savings banks.

The United States is the only great nation in the world whose post-office system does not pay a profit. The deficit has been several millions of dollars annually, that for 1901 being $3,923,727. This was caused largely by the transportation of second-class matter. Paper-covered books, bulky catalogues, commercial price-lists, and advertising circulars were published at stated intervals as "periodicals." They were "entered as second-class matter" and carried for one cent a pound, whereas the cost to the government averaged eight cents a pound. This unjust burden upon the government becomes manifest when we consider that in the year 1901 it cost $17,277,783 more to carry second-class matter than the postage paid for it. The Postmaster-General, in his annual report for the year 1900, referring to this abuse, said: "There should

Our postal deficit.

be no abatement of protest or effort against the perpetuation of evils which have insidiously grown up through the ingenious perversion of the law's intent in furthering private interests, and which have now become a heavy public burden." It is also contended that the government pays exorbitant rentals to railroad companies for postal cars, thus increasing the deficit. Bills before Congress to remedy these matters have repeatedly failed to pass.

In July, 1901, the Postmaster-General issued an order intended to prevent the abuse mentioned above in connection with second-class matter. Hereafter the terms of the law will be strictly construed, and only such publications as are genuine periodicals, containing current news or literary matter, will be carried at the one cent a pound rate.

Free Delivery.

One of the notable advances in the mail service was the provision for the free distribution of mail in cities of 10,000 inhabitants, or where the annual postal receipts are $10,000 and above.

Rural mail delivery.

Report of Post-Office Department, 1901, pp. 25, 26.

A more notable innovation was made possible by an act of Congress in 1897, which made an appropriation for testing the advantages of the free delivery system in the country districts. In many different sections of the country routes were established along which there is the daily collection and delivery of the mail from house to house. The plan has met with much favor. On June 30, 1902, 8,413 such routes had been established. The rural population receiving daily mail service amounted to some 5,700,000. The routes organized were only about one-half of the number asked for. It has been estimated that within four years 21,000,000 of rural residents will be brought within its scope. In the districts where such routes have been formed there has been a large increase of postal receipts over the revenues received from the old system of rural post-offices.* Most of the

* During the year 1901–1902, 1,906 of these post-offices were discontinued.

districts pay all the expenses and many show a net profit. In addition to bringing the country districts into more immediate connection with the centres of population, the establishment of these routes will bring about a more improved system of road making. Indeed it has practically been determined that good roads shall be made a prerequisite, and on one route the farmers expended $3,000 in the improvement of the roads before the route was granted.

Post-roads, or routes, are declared by statute to be "all letter carrier routes in towns and cities, all railroads, and canals and all the waters of the United States during the time the mail is carried thereon." Post-roads.

An act passed by Congress in 1845 provided for the transportation of mails by other means than railroad and steamboat. It does not indicate the means to be employed, whether wagon, stage, or on horses, but states that the mail must be carried with "certainty, celerity, security." These routes were later entered in the route registers as (***), and thus came to be called "star routes." There are 22,800 of these routes in operation. Star routes.

III. Copyrights and Patents.

The clause which provides that the rights of authors and inventors shall be protected by suitable Congressional enactment was adopted without debate in the Constitutional Convention. Congress was given power

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. Section 8, clause 8.

Any person desiring a copyright must deliver at the office of the Librarian of Congress, or deposit in the mail addressed to him, on or before the day of publication, a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a description of the paint- Process of obtaining a copyright. Law of July, 1900.

ing, drawing, statue, statuary, or a model or design for a work of the fine arts for which he desires a copyright. Two complete printed copies of the best edition of the book, map, etc., or a photograph of the painting, statue, etc., copyrighted must be delivered or sent to the Librarian of Congress not later than the day of publication. These copies must be printed from "type set within the limits of the United States or from plates made therefrom, or from negatives, or drawings on stone made within the limits of the United States, or from transfers made therefrom." During the period of the copyright the importation of foreign copies or editions of the work is prohibited, except in a few cases; as, a person may import for use, but not for sale, two copies of such work by paying duty, or, in case the translation of a book, only, is copyrighted the importation of it in the original language is allowed. A fee of fifty cents must be paid to the Librarian for recording the title or description of the article copyrighted, and fifty cents for furnishing a copy of this record. Every copy of such book published must have on its title page, or the following page, a notice of the copyright, the usual form being: "Copyright, 19—, by A. B." In the case of other works, the mark is inscribed on some visible portion, or, as a trade-mark, may be placed on the back or bottom of an article.

Protection by the copyright.

After complying with the law the author, inventor, designer, or proprietor of the book, chart, engraving, etc., may have the sole liberty of printing, copying, and selling it for a period of twenty-eight years. A renewal for a second term of fourteen years may be secured by complying with all the regulations for obtaining the original copyright. Copyrights may be sold or transferred providing the record is made in the office of the Librarian of Congress within sixty days.

As early as 1819 the authors of England and the United States tried to induce Parliament and Congress to pass an international copyright law. The writings of an author of one of these countries were commonly republished in the other country without his consent. All attempts to secure such legislation were fruitless until Congress enacted, March 3, 1891, that our copyright law should also apply to a citizen of a foreign nation, providing citizens of the United States are given equal copyright privileges with the citizens of that nation, or in case such nation is a party to an international agreement, into which the United States may enter, which provides for "reciprocity in the granting of copyright." Copyright relations have been established by the United States with the following nations: Belgium, France, Great Britain and her possessions, Switzerland, Germany, Italy, Denmark, Portugal, Spain, Mexico, Chile, Costa Rica, and Holland.

International copyright.

The inventive genius of the American people, together with the protection afforded inventors by our laws, account for the fact that out of 1,729,147 patents, the total number granted in all countries up to the year 1897, over one-third had been issued in the United States.* In the year 1901, 26,481 patents were granted by our government. A person desiring a patent must declare upon oath in his petition addressed to the Commissioner of Patents that he believes himself to be the first inventor of the article for which he solicits a patent. He must also submit a full description of the invention together with drawings, and if required by the commissioner, a model of it. The sum of $15 is charged for filing the application and $20 for issuing the patent. The patent is issued for seventeen years, but may be extended for seven years longer by the Commissioner or

Patents.

* Report of the Commissioner of Patents, 1897, p. vii.

by a special act of Congress, providing the inventor has not received what is regarded as an adequate money return. During this period, the patentee has the exclusive right to manufacture and sell his invention. He may also transfer the right to another if notice is sent to the Patent Office.

Caveat.

A caveat filed in the Patent Office gives a description of a proposed invention and secures to the inventor an extension of one year in which to complete his work.

The Patent Office is one of the self-supporting parts of the government. With the fees there has been constructed the building now occupied by the Department of the Interior, and a large surplus has been accumulated besides.

IV. Piracies and Felonies.

Section 8, clause 10.

Congress shall have power to define and punish piracies and felonies committed on the high seas and offences against the law of nations.

The jurisdiction of a State is limited by the low-water mark. The United States has jurisdiction over the waters beyond the low-water mark and extending three miles farther into the ocean, and including gulfs and bays; also over crimes committed on vessels of this nation upon the high seas, that is, the waters of the ocean beyond this limit.

Crimes on the high seas.

"Piracy is robbery on the sea, or by descent from the sea upon the coast, committed by persons not holding a commission from, or at the time pertaining to, any established state." The established punishment for piracy is death. Each nation has the power to extend the definition of piracy, as, for illustration, in 1820 Congress declared the slave trade to be piracy. Such a law, however, can be made to apply only to citizens and vessels belonging to that nation.

Piracy. Woolsey, International Law, § 137.

Felonies are usually interpreted as including such extreme offences as treason, murder, arson, and other crimes, punishable by death or imprisonment in State prison. Felony.

The law of nations or international law is defined as follows: "The rules which determine the conduct of the general body of civilized States in their dealing with one another." * Law of nations.

V. Military Powers of Congress.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; Section 8, clauses 11, 12, 13, 14.

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

The power to declare war in European nations largely rests with the Executive. Such a plan was proposed in the Constitutional Convention but it was thought a sovereign power of this nature ought to be exercised in a Republic by the representatives of the people. A formal declaration of war is not absolutely necessary before hostilities are begun, but it is usual. Declaration of war.

In 1812, a formal act was passed by Congress to the effect that "war be and is hereby declared to exist" between Great Britain and the United States. April 20, 1898, Congress passed resolutions which were signed by the President and sent as an ultimatum to Spain, demanding that her land and naval forces be withdrawn from Cuba and that an answer be returned before noon of April 23d. On the day this ultimatum was sent, the Spanish minister at Washington requested and received

* Lawrence, The Principles of International Law, p. 1.

his passports. On April 21st, before our minister, Mr. Woodford, was able to deliver the decree, the Spanish government notified him that diplomatic relations with the United States were at an end. Minister Woodford immediately left Madrid and the fleet at Key West was ordered to sail. April 25th, President McKinley sent a message to Congress asking for a joint resolution declaring that a state of war existed between Spain and the United States. A bill was introduced and at once passed both Houses declaring that war did exist and had existed since April 21st.

Privateers.

Great harm has been done to commerce through the use of privateers in time of war. These are vessels which are owned and officered by private persons but are commissioned through the granting by a government of letters of "marque and reprisal." * With such a commission, a vessel is privileged to seize the property of the enemy wherever found. In the Congress of Paris, of 1856, in which the chief European powers, Spain excepted, were represented, one of the principles agreed to was that privateering should be abolished. Although our government was not a party to the agreement, the President declared at the opening of the Spanish-American War that its provisions should be maintained. Spain declared in favor of granting letters of marque to privateers but did not carry out the threat.

Captures.

Captures on land become the property of the government. Prizes, or captures on the water, are sold under the authority of the United States District Court. The proceeds are divided among the victorious crew in proportion to the service-pay of each, if the captured vessel

* The term was at first applied on land. An officer thus commissioned might pass the *mark*, or boundary, and make reprisals on the persons or property of the enemy.

is of equal rank with the captor; if of inferior rank one-half is paid to the government.

There was great jealousy and fear of the power of the army at the close of the Revolutionary War. In order that the standing army might not become unduly large, the Constitution provides that the appropriation for that purpose shall not be for a longer term than two years. It was believed that a check could then be imposed through the election of new Representatives. These appropriations have ordinarily been made annually. Compared with the standing armies of European nations, our army is insignificant in numbers. Prior to 1898 it was limited to 27,000 enlisted men.* The army of France on a peace footing now numbers 573,000 men; of Germany 687,000; of Great Britain 217,000; and of Russia 949,000. The army.

The President is *ex-officio* commander-in-chief of the army and navy of the United States, but the actual movements of the army are practically directed by the lieutenant-general, the officer now highest in command. The office of general was created by Congress, March 3, 1799, but no one was appointed under its provisions. It was revived in 1866 for Grant. Sherman succeeded him in 1869. This office was bestowed on Sheridan in 1888. The army is apportioned to three geographical divisions: that of the Atlantic, of the Missouri, and of the Pacific. Each division is commanded by a major-general. These divisions are subdivided into six departments, each having one or more brigades of men in command of a brigadier-general. Each brigade is divided into regiments commanded by a colonel who is aided by a lieutenant-colonel and a major. The adjutant, who acts as secretary for the colonel, and the quartermaster, who looks after the supplies, are both officers of the regiment ranking as first lieutenants. Infantry regiments consist of ten companies. The cavalry regiments have twelve troops or com- Officers and classification of the army.

* An act passed by Congress, March 1, 1899, enabled the President to increase, for a term of two years, the regular army to 65,000 and to secure an additional volunteer force of 35,000 men. The "New Army Law" of January, 1901, established the minimum of men in the army at 57,000 and the maximum at 100,000.

panies, and the artillery twelve companies or batteries. There is one major in an infantry regiment, but the cavalry regiment has three majors, each having charge of a battalion of four companies. The maximum number of men in a company is 100. The commissioned officers of a company are captain, first and second lieutenants, with an additional first lieutenant for the artillery. The non-commissioned officers are first sergeant, sergeant, and corporal. Officers above the rank of colonel are called "officers of the line" and all others "field officers."

The navy.

The construction of a navy in the modern sense was not begun by our government prior to 1883. Since that time there has been a notable advance and in 1901 it was estimated that our navy was excelled in strength only by those of Great Britain, France, and Russia. That there was an appropriation of $36,000,000 in 1899 to be used in the construction of twelve new warships would seem to indicate that Congress regards it desirable to strengthen still further our sea-power.

Classes and names of vessels.

A ship of the first class is given the name of a State, one of the second class that of a principal city or river, and the name for one of the third class is selected by the President. The navy now contains 312 vessels of all kinds. Of these 189 are in the regular navy and the remainder constitute an auxiliary force. At the beginning of the year 1898, the number of men on board the war-vessels aggregated 12,500, but during that year the number was nearly doubled. The titles admiral and vice-admiral, corresponding to the grades of general and lieutenant-general in the army, were created by act of Congress to be bestowed as a recognition for very distinguished service during the Civil War on the following men: Admirals Farragut and Porter, and Vice-admirals Farragut, Porter, and Rowan. Admiral Dewey was likewise granted his title by a special act of Congress after the battle of Manila. Grades in the line of the navy ranking with the army officers, major-generals, brigadier-generals, colonels, and so on, are rear-admirals, captains, commanders, lieutenant-commanders, lieutenants, masters, ensigns.

Number of men and officers in the navy.

The naval militia has been organized in eighteen States. They

are under the immediate direction of the governors and adjutant-generals. When called into service during time of war they man the vessels for the defence of the harbors, thus freeing the regular force to engage in active warfare. Naval militia.

Since the organization, in 1775, of the first marine corps its members have done excellent service in all wars in which the United States has been a party. Their numbers are limited to 6,000, some seventy-five being assigned to each of the first-class battle-ships. They are armed with rifles and constitute the sharpshooters of the navy. On shore they perform guard duty at the navy-yards. The marine corps.

A nation must depend for protection, either upon a large standing army or upon citizen-soldiers. Since the regular army was to be small, the plan to provide for the militia, met with but little opposition in the Constitutional Convention. Congress was accordingly given the power The militia.

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions. Section 8, clause 15.

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress. Clause 16.

As defined by Congress the militia consists of all able-bodied male citizens of the United States and those who have declared their intention to become citizens between the ages of eighteen and forty-five years. They may be enrolled under the authority of the President providing the States neglect to do so. Who are the militia?

In the emergencies named in the clause, the President issues a call directed to the governors of the States who are then compelled to furnish the troops requested. The militia may be called into active service under their own State officers for a period of nine How called into service.

months. During this period they are subject to the rules and discipline of the regular army. On three occasions has the militia been called out under this provision: in the Whiskey Rebellion, in the War of 1812, and in the Civil War.

The National Guard.

That portion of the militia regularly organized into regiments in the various States under officers of their own selection is called the National Guard. It belongs to the separate States and may be mustered into the service of the United States under the same conditions as the unorganized militia.

Volunteers of 1898.

When war with Spain was determined upon, the volunteer army bill was passed by Congress and the President issued a proclamation, April 23d, calling for 125,000 volunteers for two years' service. May 25th, there was a second call for 75,000. These were apportioned among the States and Territories according to their population. The militia could not be called out, for the conditions mentioned in clause 15 did not apply, and it was necessary to resort to the volunteer service. Preference was given to those volunteers who were members of the organized militia.

VI. Location of the Capital.

The Congress of the Confederacy, in 1783, while in session at Philadelphia, made a fruitless appeal to the authorities of Pennsylvania for protection against the menaces of a portion of the unpaid Revolutionary army, and was compelled to leave the city. The agitation arising over this incident doubtless led to the Constitutional provision:

Section 8, clause 17.

Congress shall have the power to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over

all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.

After a notable contest, Congress in 1790 accepted the cession of ten miles square of land in which to locate the National capital, offered by the States of Maryland and Virginia and situated on the Potomac River. Some thirty square miles were afterward re-ceded to Virginia. New York had been the capital since 1785. In 1790, it was again located at Philadelphia for ten years, and was then transferred to the District of Columbia.

District of Columbia.

The local affairs of the District are administered by three commissioners: a Republican, a Democrat, and an officer of the Engineer Corps of the army. They are appointed by the President and confirmed by the Senate for a term of three years, and each has a salary of $5,000 per annum. They are granted the privilege of originating many bills relative to the affairs of the District, which then pass through the ordinary course of legislation in Congress. All other officers are appointed by the President, the inhabitants not having the right of the ballot in a single instance. One-half the expenses of the government is provided for through Congressional appropriations. The remainder is met by taxation in the District.

Government of the District.

When the States sell land to the general government to be used for forts, magazines, and other purposes, they usually reserve the right to serve civil and criminal writs on persons within the ceded territory. Such places cannot, in consequence, become asylums for fugitives from justice.

Forts and arsenals.

VII. Implied Powers.

We are now to consider one of the most important grants of power to Congress:

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof.

Section 8, clause 18.

Our National development has been largely depend-

ent upon the liberal construction given this clause, which is often called the "elastic clause" of the Constitution.

Strict and loose construction.

The question of its real interpretation arose over the problem of establishing the first United States Bank in 1791. Madison urged, when the measure was being considered in the House of Representatives, that Congress did not possess the power of establishing such a corporation, since it was not *expressly* granted by the Constitution. When President Washington referred it to his Cabinet for consideration, Jefferson took a similar position. Hamilton maintained, on the other hand, that the power was *implied* in the foregoing clause, and that if the bank were "necessary and proper to carry out any specific powers, such as taxation and the borrowing of money, then Congress might create a bank or any other public institution to serve its ends." We have here the first assertions of the doctrines of the strict and loose constructions of the Constitution. A few of the other great questions, besides that of the United States Bank, which have led to the definition of these views have been, Has Congress the right to make appropriations for internal improvements? Does the Constitution allow the establishment of a protective tariff or the acquisition of territory? Is not the making of paper money legal tender unconstitutional? In general, the views on the interpretation of the Constitution held by Hamilton and the Federalists have been those of the Whig and the Republican parties, and those held by Jefferson and the anti-Federalists have constituted the guiding principles of the Democratic party. Strictly speaking, however, the party in power have been loose constructionists and their opponents have been strict constructionists. A study of the questions just indicated shows that there has been present the tendency, throughout the history of our Nation, to advance the principle of the broad inter-

The positions of political parties.

pretation of the Constitution, and this has led to the taking of an advanced position by the party of strict interpretation. Thus the Democratic party of 1850 would be considered the party of liberal interpretation if compared with the Democratic-Republican party of Washington's administration.

Mr. Bryce has well said: "The interpretation which has thus stretched the Constitution to cover powers once undreamt of may be deemed a dangerous resource. But it must be remembered that even the Constitutions we call rigid must make their choice between being bent or being broken. The Americans have more than once bent their Constitution in order that they might not be forced to break it." *

SUPPLEMENTARY QUESTIONS AND REFERENCES.

1. *a.* The following references are good on the subject of postal reform: Forum, 24 : 471–475; 723–728; N. Am. Rev., 166 : 342–349; 172 : 420–430.
 b. Should postal savings-banks be established? N. Am. Rev., 172 : 551–554.
 c. Should there be a system of postal telegraphy? Century Mag., 59 : 952–956; N. Am. Rev., 172 : 554–556.
2. For the methods employed in the patent office and a comparison between our system and that of European nations, see The United States Patent Office, Century Mag., 61 : 346–356.
3. *a.* Is our army degenerate? Forum, 27 : 11–23.
 b. Describe the organization of our army. Harper's Mag., 80 : 493–509; Forum, 21 : 34–43.
4. *a.* For an interesting account of the army and navy at the opening of the war with Spain, see Lodge, Harper's Mag., 98 : 833–858.

* Bryce, American Commonwealth, I, 390.

b. How is the success of our navy in the war with Spain accounted for? Atl. Mo., 82 : 605–616; Scribner's Mag., 24 : 529–539.

5. What was the character of our navy prior to 1883? Harrison, This Country of Ours, 251–255.

6. The condition of our navy at the opening of the Spanish-American War. Rear-Admiral W. T. Sampson, Century Mag., 57 : 886–913.

7. The process of the construction and cost of a battleship. Century Mag., 48 : 347–352.

8. Our naval progress compared with other nations. Rev. of R's, 17 : 70–71.

9. What were the conditions which led to the escape of Congress to Princeton? Fiske, Critical Period, 109–114.

10. What special problem was connected with the location of the capital? How was it finally settled? Hart, American History Told by Contemporaries, III, 269–272; Schouler, I, 152–156; McMaster, I, 555–562.

11. The development of Washington during the one hundred years of its existence is discussed in Rev. of R's, 22 : 675–686; Forum, 30 : 545–554.

12. For the influence of the implied powers, see:

a. Internal improvements. Hart, American History Told by Contemporaries, III, 436–440; Walker, The Making of the Nation, 204, 205, 262, 263; Hart, Formation of the Union, 227–229, 253–255.

b. The United States Bank. Hart, American History Told by Contemporaries, III, 446–450; Hart, Formation of the Union, 150–151, 226–227; Walker, The Making of the Nation, 82–83.

c. The annexation of territory. Hart, American History Told by Contemporaries, III, 373 – 376; Walker, The Making of the Nation, 177 – 184; Hart, The Formation of the Union, 188.

d. Legal tender cases. Wilson, Division and Reunion, 280–281. See also p. 214.

CHAPTER XXI

POWERS DENIED THE UNITED STATES AND THE SEVERAL STATES

After an enumeration of certain powers granted to Congress, we come next to consider those retained by the people. They represent the fruits of centuries of contests which not even the representatives of the people should be privileged to destroy. In like manner, at the time of the formation of the Constitution it was desirable that the general government should be protected from the encroachments of the individual States.

Prohibitions on the United States.

Traffic in slaves was general among civilized nations in 1787. It is satisfactory to note, therefore, that a majority of the delegates in the Convention favored the prohibition of the slave trade immediately. All of the States, Georgia, North Carolina, and South Carolina excepted, had already prohibited it. Through fears that the adoption of the Constitution would be endangered, a concession was finally made to these States by a compromise which provided that the slave trade should not be prohibited for a period of twenty years.

Slave trade prohibited.

The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Article I, section 9, clause 1.

Such a tax was never imposed. It was found that the law of 1807 which was to take effect January 1, 1808,

and thus carry out the intention of this clause, did not wholly stop the traffic. Congress, therefore, in 1820, declared the slave trade to be piracy punishable with death.

Section 9, clause 2.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Habeas corpus.

A writ of *habeas corpus* is a writ granted by a court commanding an officer to produce before it the body of a prisoner, that the court may inquire into the cause of imprisonment or detention. If after such inquiry, it is found that a person is detained for insufficient cause, he is given his freedom. Congress has been given, by judicial decision, the right to suspend the writ in case of rebellion or invasion, but may grant this right to the President.

Mr. Lincoln and the suspension of the writ.

On April 27, 1861, for the first time in the history of the Nation, President Lincoln ordered the writ suspended between Philadelphia and Washington. Not until March 3, 1863, did Congress legalize this act of the President and authorize him to suspend the writ throughout the United States, during the war, whenever he believed the public safety demanded it. President Lincoln had already authorized its suspension, at different times, over limited areas. In September, 1863, he declared the suspension general throughout the country.

Clause 3.

No bill of attainder or ex post facto law shall be passed.

Bill of attainder.

"Bills of attainder are such special acts of the legislature as inflict capital punishments upon persons supposed to be guilty of high offences, such as treason and felony, without any conviction in the ordinary course of proceedings. If an act inflicts a milder degree of punishment than death it is called a bill of pains and penalties." The great abuses under such a law grow out of the fact that persons may be deprived of life, liberty, or property without judicial procedure, and such action would be intolerable in the United States.

Story, On the Constitution, II, 216.

The Supreme Court has given the following definition: "An ex post facto law is one which renders an act punishable in a manner in which it was not punishable when it was committed. The phrase applies to acts of a criminal nature only. . . . Laws which mitigate the character or punishment of a crime already committed, may not fall within the prohibition, for they are in favor of the citizen." *

Ex post facto laws.

Story, On the Constitution, II, 220, 221.

No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Clause 7.

It is proper in a government such as ours that the control of the public money should be lodged with the representatives of the people. Through the annual report of the Secretary of the Treasury, the people may know from what sources our revenues are derived and for what purposes the money is expended.

Care of public money.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever from any king, prince or foreign state.

Clause 8.

An amendment proposed in 1809 provided that anyone who accepted a title of nobility or, without the consent of Congress, a present, office, or emolument from any foreign sovereign or state should cease to be a citizen of the United States and be incapable of holding any office therein. That the spirit of antagonism to a titled citizenship was general is shown by the fact that this amendment passed both Houses of Congress, received the sanction of twelve States, and failed of ratification by only one vote.

Titles of nobility.

* Section 9, clause 4, is discussed under National Finances, p. 188. Section 9, clauses 5 and 6, are discussed under Commerce, pp. 197, 198.

It was hoped through the second part of the clause that public officers would be removed from the dangers of bribery by foreign nations. Congress may allow gifts to be accepted by our officials but usually they pass into the control of the government.

Gifts from foreign states.

Section 10, clause 1. Absolute prohibitions on the States.

No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal, coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

It is obvious that the power to enter into treaties, alliances, and confederations or to grant letters of marque and reprisal should be confined to the general government alone. Otherwise, there would be constant danger that the individual States might enter into alliances or grant privileges which would tend to destroy the Union. Congress had already been given the power to coin money and regulate its value. Hopeless confusion must ensue were the States to be given like powers. During the colonial and revolutionary periods there were many notable examples of the evils which always followed the issue, by the States, of paper money designed to circulate as a legal tender.

The States and money.

When two or more persons enter into a compact "to do or not to do a particular thing" which is legally binding upon them, no State, may, in any way, modify this agreement. This interpretation was established by the decision in the celebrated Dartmouth College case.*

Obligation of contracts.

Section 10, clause 2. Conditional prohibitions on the States.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the

* See Magruder, John Marshall, American Statesmen Series, 190–198.

Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

Section 10, clause 3. Other conditional prohibitions on the States.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

Were the States given power to lay tonnage dues (a tax on ships by the ton according to their carrying capacity), it would interfere with the regulation of commerce by Congress. No justification for the remaining prohibitions is needed, for if these powers were possessed by the States the Union might quickly be destroyed.

CHAPTER XXII

THE EXECUTIVE DEPARTMENT

Nomination of President and Vice-President.

The Executive.

The great weakness of the government under the Confederation grew out of the fact that there existed no adequate executive. The desire to remedy this defect was general and all of the plans submitted in the Constitutional Convention made provision for an executive. There was no agreement, at first, as to whether the executive power should be vested in one person or more than one. The fear of a monarch was deep-seated in the minds of the people. Finally, the desire to secure energy in the execution of governmental affairs and responsibility led to the determination to provide for a single executive.

Title and length of term of the Executive.

It was proposed in the draft submitted by Mr. Pinckney, that the executive power should be vested in a President of the United States of America who should have the title, "His Excellency." * The term President was in common usage; Congress had called its chief officer President, and the chief magistrates in some of the States bore the same name. Much discussion was aroused over the question of the proper duration of the

* The proposition was made, in Congress, soon after the government went into operation, that some more dignified title should be applied to the President. "His Highness, the President of the United States and Protector of their Liberties," "His Patriotic Majesty," "His High Mightiness," and other aristocratic titles were suggested. But an agreement was reached that he should be addressed in official documents as the "President of the United States."

term of office. Hamilton and Madison favored a continuance in office during good behavior. A term of three years and one of seven years were also recommended during the early days of the Convention. The proposition to choose the Executive for seven years was at first carried by a majority of only one vote; but when the clause, "to be chosen by the National Legislature," was added, eight States agreed to it. That the President should not be eligible for re-election was determined by the same number of votes. So the clause stood in the first draft of the Constitution. Toward the close of the Convention, upon recommendation of a committee that the method of election previously agreed to should be changed, the length of term was fixed at four years. It was then declared, too, that by this change the President might be elected for more than a single term. So the clause finally read:

Article II, section 1, clause 1.

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

Method of election.

No problem in the Constitutional Convention was more difficult of solution than that of determining the method by which the President was to be chosen, and it is said to have occupied one-seventh of the entire time of the Convention. Many plans were proposed. Among them were those which provided for the selection by Congress; by the people; and by Electors who should be appointed as the State legislatures might direct. The method most in favor for a considerable time proposed that the President should be chosen by Congress. The argument which led to a reversal of the decision toward the end of the Convention was that the President would be liable to become a tool in the hands of the dominant party in Congress. This desire to escape any official

influence led to the adoption of the clause that: "No Senator or Representative, or person holding a position of trust or profit under the United States, shall be appointed an Elector." There was general distrust of the method of election by the people because of the "tumult and disorder" which it was believed would be the accompaniment of such an important choice. Then, too, the belief was general in the Convention that the people would not be sufficiently well informed concerning the qualifications of men who were suitable for the Presidency.

"The Federalist," No. 68.

These views are set forth in "The Federalist" as follows: "The immediate election should be made by men, the most capable of analyzing the qualities adapted to the station and acting under circumstances favorable to deliberation and to a judicious combination of all the inducements which ought to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass for this special object, would be most likely to possess the information and discernment and independence requisite to so complicated an investigation." Besides, it was thought this method would insure the election of a man "in an eminent degree endowed with the requisite qualifications . . . of a man pre-eminent for ability and virtue." The Convention at last decided in favor of giving the selection of the President and the Vice-President into the hands of independent Electors, whose appointment was provided for as follows:

Section 1, clause 2. Appointment of Electors.

Each State shall appoint, in such manner as the legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

Many different methods of choosing Electors have been used. The favorite at first was that each State legislature chose the Electors for its State. South Carolina used this method until 1868. The district method has also been used, by which an Elector is chosen in each of the Congressional districts and two for the State at large. This method, which most nearly expresses the wishes of the people, has been used but once since 1832.* At the present time, the Electors are elected in each State on a general ticket by direct vote. Each political party nominates a "number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in Congress."

The nominations of candidates for the office of Elector are usually made at the State Conventions of the different parties when they nominate State tickets. These occur usually in August or September preceding the November election. Each person then votes for the entire number of Electors to which his State is entitled, and will naturally vote for all the Electors of his party ticket. The political party, therefore, which receives the majority of the votes in a State secures all the Electoral votes of that State.†

* In 1892, Michigan chose her Electors by districts. A test case was brought before the United States Supreme Court on the ground of unconstitutionality. It was decided that the Legislature had acted within its powers, but two years later the law was repealed.

† It has sometimes happened, however, when the election in a State has been close that one or more of the Electors on a minority ticket have run ahead of the other candidates on that ticket and have secured a larger number of votes than candidates on the majority ticket, thus obtaining an election. California, in 1892, gave one Electoral vote to Mr. Harrison and eight to Mr. Cleveland, and again, in 1896, gave eight votes to Mr. McKinley and one to Mr. Bryan. Kentucky, in 1896, cast twelve votes for Mr. McKinley and one for Mr. Bryan.

Instances have occurred in which two weaker political parties have combined in their Electoral ticket against a stronger party and by such a *fusion* have been able to carry a State, thus dividing the Electoral votes of that State between them.

It was originally intended that the Electors should exercise the right of free choice, but on account of the growth of the power of political parties they do not. They are pledged to vote for candidates already nominated in party Conventions. So we know the day following the election who is to be the next President. The framers of the Constitution did not anticipate such an influence and considered no plans for nominating candidates. But as this has become the real method by which Presidents are selected, we shall consider next the place of National Conventions.

Nomination of candidates for President and Vice-President.

The National Conventions of both the great parties are made up of twice as many delegates from the different States as these States have Representatives and Senators in Congress. There are also chosen as many alternates as delegates. The place of a delegate is taken by his alternate when the delegate is not able to attend the Convention. These delegates are chosen by Conventions in the different States in April or May of the Presidential election year. According to the usual method, two delegates are selected for each of the Congressional districts by the district Conventions of each party and four delegates-at-large are chosen by the State Conventions. In some States all the delegates of a party are selected in the State Convention. The Republican party Convention also admits to full membership two delegates from each Territory and one from the District of Columbia.

The National Conventions.

The National Convention is held in some leading city during the month of June or July of the year in which a President is to be elected. A few days before the day set for the Convention the delegates, together with many thousands of politicians, newspaper reporters, and sight-seers, flock to that city. Head-quarters are established and delegations "labored with" in behalf of the differ-

ent candidates. On the day appointed, the Convention is called to order by the chairman of the National committee under whose auspices the Convention is to be held. A temporary chairman is elected, clerks and secretaries are appointed, and rules for the government of the Convention are adopted. Committees are then made up, the most important being those on credentials and resolutions, and the Convention adjourns to await their report. In the next session, a permanent chairman is usually selected and the report of the committee on resolutions, which sets forth the platform embodying party doctrines and principles, is given. Then follow the nominations. The roll of States is called and the names of the various favorites are placed before the Convention as their home States are reached. A State sometimes waives its privilege in behalf of some other State which has a candidate to present. Again, the clerk calls the roll of the States and each chairman of a delegation announces the votes from his State. In the Republican Convention, an absolute majority of the number of delegates voting is sufficient for nomination. No nomination is possible in the Democratic Convention except by the vote of two-thirds of the delegates voting. Then follows the selection of a candidate for Vice-President. In this choice the attempt is made to secure some man who will add strength to the party and who comes from a different section of the country from that represented by the candidate for the Presidency. He may, as in the cases of Tyler and Johnson, represent a faction of the party that is not in entire agreement with the majority.

Work of the National Convention.

A National committee is also appointed, made up of one member from each State nominated by the State delegation. This committee is elected before the nominations have been made. The wishes of the nominee

The National committee.

prevail in the choice of the chairman. The committee occupies a position of great importance, for by it the platform of the party is largely determined. We have here a body of men not mentioned by the Constitution but exerting vastly greater influence upon the election of President than does the Electoral College itself. The campaign is organized by this committee. Money is secured, speakers are selected, and party literature is sent out by it. The committee looks after the interests of the party during the ensuing four years and issues the call for the next National Convention.

Campaign fund.

Some idea of the extent of the National committee's power may be gathered when we consider the size of the campaign fund intrusted to its care. It is said that the whole cost of conducting the campaign in which Mr. Lincoln was elected for the second time amounted to $100,000. The amount of money spent by each of the two National committees in 1900 is estimated at $5,000,000. A large proportion of this sum was expended in the establishment of National committee head-quarters, in the publication and distribution of campaign literature, and in meeting the expenses of speakers. It is probably not an overestimate to say that $20,000,000 were expended by the National, State, Congressional, county, and ward committees in conducting the campaign of 1900.

Early methods of nominating.

Like the development of other political usages, the method of nominating a President passed through several stages before the present plan of nominating conventions was reached. No nominations were made in the first two Presidential elections and Washington was elected as provided for by the Constitution. In 1796, Washington having refused to be a candidate for a third term, party managers in Congress agreed informally on Adams and Jefferson as the candidates of the Federalist and the Republican parties. A caucus of Federalist Congressmen, in 1800, nominated Adams and Pinckney, and a caucus of Republican Congressmen nominated Jefferson and Burr for the offices of President and Vice-President. The Republican members of Congress continued to hold a regular caucus and thus direct the votes of the party Electors until 1824. In that year William H. Crawford, the last Congressional nominee,

was defeated. There was opposition to the Congressional caucus from the beginning, for such a method was regarded as undemocratic. In 1824 and 1828, the several State legislatures put forward their favorites for the office of President.

Nomination by National Conventions.

As early as 1812, De Witt Clinton was nominated as the candidate of the Federalists in a Convention made up of seventy delegates, representing eleven States, which met in New York City. But the National Nominating Convention, as we know it, was used for the first time by the Anti-Masonic party which selected William Wirt for its candidate in 1831. This method was followed in the same year by the National Republican party which nominated Henry Clay. The National Convention of the Democratic party in 1832 nominated Andrew Jackson, who had already been nominated by many local Conventions and State legislatures. Many years elapsed before the present complex organization was reached, but since 1836, with the single exception of the Whig party in that year, parties have regarded the National Convention as an essential factor in electing President and Vice-President.

Supplementary Questions and References.

1. July 9, 1789, the Constitutional Convention, by a vote of 9 to 1, fixed on a term of six years for the President with no re-election. Would this be a desirable change at present? Presidential Elections Paralyzing to Business, Forum, 22 : 563–570.

2. *a.* Why was it thought best to make the President eligible to re-election for more than one term? Madison, Journal of the Constitutional Convention, 369 ; The Federalist, No. 72.

 b. What led to the understanding that a President was to be elected for only two terms? Is there

good reason for holding to this tradition? McMaster, The Third Term Tradition, Forum, 20: 257–265; Eaton, The Perils of Re-electing Presidents, N. Am. Rev., 154: 691–704.

c. What Presidents have served two terms? How was their election for a second term to be accounted for?

3. *a.* The method of calling National political Conventions. When held? Questions considered? Make a study of the last Conventions. Thurston, How Presidents are Nominated, Cosmop., 29: 194–200; Maurice Low, How a President is Elected, Scribner's Mag., 27: 643–656.

b. For an interesting account of National Conventions, see Four National Conventions, Scribner's Mag., 25: 152–174.

c. What is a "dark horse" in a National Convention? Give instances in our history.

d. Under what conditions was the first platform of a National Convention agreed upon? Wilson, Division and Reunion, 63.

e. Compare the chief planks given in the various party platforms of the last Presidential election. Do the successful parties generally fulfil the pledges of their platforms?

f. For the work of the National committee, see Rev. of R's, 22: 549–556; 556–563.

4. Discuss the various plans suggested for electing a President. Madison, Journal of the Constitutional Convention.

5. What was the probable origin of the system of electing a President by Electors? Harrison, This Country of Ours, 78; Fiske, Critical Period of American History, 66, 280–289.

6. For the methods which have been used in electing a President, see N. Am. Rev., 171: 273–280.

7. How was the method of electing the President by independent Electors regarded at the time of the adoption of the Constitution? The Federalist, No. 68.

8. Should Electors for President and Vice-President be elected by the vote of Congressional districts with two at large for each State instead of upon a general ticket? Forum, 12 : 702–713 ; N. Am. Rev., 154 : 439–446 ; The Federalist, No. 68 ; Bancroft, History of the United States, VI, 328–340.

9. Should the President be elected by direct popular vote? N. Am. Rev., 171: 281–288 ; 273–280 ; Schouler, Grave Dangers in Our Presidential Electoral System, Forum, 18 : 532–536 ; Carlisle, Dangerous Defects in Our Electoral System, Forum, 24 : 257–266 ; 651–659 ; Scribner's Mag., 27 : 643–656.

CHAPTER XXIII

THE ELECTION OF A PRESIDENT

HAVING considered the method by which a President is nominated and that by which the Electors are chosen, we are now prepared to discuss the way in which the Electors choose a President, for the steps prescribed by the Constitution must still be followed, although the election has been practically decided by popular vote. The function of the Electors is given in Article XII of the Amendments.

Function of the Electors.

The Electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign, and certify, and transmit, sealed, to the seat of government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted;—the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representa-

Amendment XII.

tion from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right to choose shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Meeting of the Electoral Colleges.

The Electoral Colleges, made up of the Electors in the several States, are all required to meet on the second Monday in January. Each Electoral College must meet in its own State, usually at the State capital. After the Electors have voted for President and Vice-President separately, three lists are made of all the persons voted for as President and as Vice-President and the number of votes for each. These lists are then certified to, signed by the Electors, and sealed. One of the lists is carried by a special messenger to the President of the Senate at Washington; another is sent by mail to the same officer, and the third is deposited with the United States District Court Judge of the district in which the Electoral College meets.*

* If neither of the other lists has been received by the President of the Senate by the fourth Monday in January following the election, he may send a special messenger to obtain the list deposited with the District Judge.

Counting the Electoral votes.

These votes are opened by the President of the Senate in the presence of the Senate and the House of Representatives on the second Wednesday in February, and the votes are counted. The person having a majority of all the Electoral votes cast for President is declared to be duly elected President of the United States, and the person who has a majority of the Electoral votes cast for Vice-President is declared duly elected Vice-President of the United States. Contrary to the expectation of the Constitutional Convention, the votes cast by the Electors since 1800 have been merely a form of registering the popular verdict. While there is no law which prevents an Elector from voting for candidates other than those on his ticket, still the custom of voting only for his own party candidates has become as binding as any statute.*

Amending the Constitution by usage.

Thus, in the election of a President, we have an excellent illustration of what has been styled "Amending the Constitution by usage." "The difference between the actual and the Constitutional modes is the difference between an ideal non-partisan choice and a choice made under party whips; the difference between a choice made by independent unpledged Electors acting apart in the States and a choice made by a National party Convention." †

If none of the candidates receives a majority of the Electoral votes, the House of Representatives must proceed immediately to choose a President from the three candidates having the highest number of Electoral votes. In 1825, the House was called upon to choose a Presi-

* The most notable exception was in the election of 1872, when sixty-six Electors were pledged to vote for Horace Greeley for President. Mr. Greeley died before the meeting of the Electoral Colleges. When they met, the votes of the Electors were divided between two prominent Democrats, with the exception of those of three Electors who still insisted in carrying out instructions by casting their ballots for Mr. Greeley. The question arises, What would have been the solution of the problem were a majority pledged to vote for him?

† Wilson, Congressional Government, 243, 244.

dent from the three highest candidates; Andrew Jackson, John Quincy Adams, and William H. Crawford. Mr. Adams was chosen President, having received the votes of thirteen out of twenty-four States, although he had fewer Electoral votes and fewer popular votes than Mr. Jackson.

Election of a President by the House of Representatives.

The XIIth Amendment provides that if a President is not chosen by the House of Representatives "whenever the right of choice shall devolve upon them before the fourth day of March next following, then the Vice-President shall act as President," as in the case of the death, resignation, or removal of the President. There has been no such case in our history. It is also provided that if no person have a majority of the Electoral votes for Vice-President the Senate shall choose the Vice-President from the two candidates having the highest numbers on the lists. The one instance of the election of a Vice-President in this way occurred in 1837, when the Senate elected Richard M. Johnson, who had already received the highest Electoral vote.

The Vice-President.

The framers of the Constitution did not consider the question of appointing a tribunal to whom might be referred the returns of a State when in dispute, or to decide between two conflicting returns from two sets of Electors. By a joint rule adopted in 1865, the vote of any State, where there was objection made, was not to be counted except by agreement of both Houses of Congress. The votes of two States were rejected under this rule in 1873. On both dates the Senate and the House were under the control of the same political party.

Disputed returns.

But in 1876, the Senate was Republican and the House Democratic. Consequently, there could be no agreement on disputed returns. The twenty-one Electoral votes of Florida, South Carolina, Louisiana, and Oregon were in dispute. The deadlock was broken and the strained condition throughout the Nation was re-

The Electoral Commission.

lieved by the agreement on the part of both Houses to accept the decision of an "Electoral Commission." This Commission consisted of five Judges of the Supreme Court, five Representatives, and five Senators. After examining the returns, the Commission decided, March 2, 1877, by a vote of 8 to 7, that Hayes and Wheeler, the Republican candidates, had received the twenty-one votes in dispute, thus giving them 185 Electoral votes, and that Tilden and Hendricks, the Democratic candidates, had received 184 Electoral votes.

Law of 1887.

In consequence of the grave problem which arose in 1877, Congress passed an act February 3, 1887, which provides that any contest in the choice of Electors in a State must be decided by the State authorities under the laws of the State.

The wisdom of having uniform days when the Electors are to be chosen and when they must give their votes is almost self-evident. So the Constitution provides:

Article II, section 1, clause 3.

The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

By such a provision, there is less opportunity for political intrigue and combination. The day on which the Electors were to be chosen was changed from time to time until 1845, when Congress enacted that the day should be the same throughout the United States. They selected the first Tuesday after the first Monday in November of the years exactly divisible by four. In nearly all of the States this is also the day for the election of State officers and is known as general election day. As already indicated, the second Monday in January is now the day on which all the Electoral Colleges are required to cast their votes. The President of the Senate sends for the missing returns on the fourth Monday in January. The certificates are opened and the votes are counted on the second Wednesday of February.

Times of election and voting.

Vacancies in an Electoral College.

Vacancies sometimes occur in the Electoral College of a State between the time of election and the date when the Electors are to cast their votes for President and Vice-President. Congress enacted in 1845 that each State might provide, by law, for the filling of vacancies in the Electoral College, and if any State failed to choose Electors on the regular day that they might be appointed on a later day in such manner as the State might, by law, direct. Nearly all of the State legislatures have conferred on the College itself the power of filling vacancies.

The first three Presidents were chosen by the method given in the original clause.

Section 1, clause 2. The original method of choosing the President.

"*The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they sign and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such a majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice-President.*

But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.

According to this clause it will be noted that the Electors voted for two persons without stating which was to be President and which Vice-President. In the official count the candidate receiving the highest number of votes, provided it was a majority of the whole number of Electoral votes, became President and the one receiving the next highest became Vice-President.

Election of 1796.

Accordingly, in the election of 1796, John Adams, who received the highest number, 71, out of 132 Electoral votes, was elected President, and Thomas Jefferson became Vice-President, having received 68 votes or the next highest number. Evidently this was a weakness in the system of election which had not occurred to the makers of the Constitution. By it, the President and Vice-President might be of different political parties.

Election of 1800.

The election of 1800 showed the plan to be impracticable in another way. At this time, the Democratic-Republican party was determined to have Mr. Jefferson for President and Aaron Burr for Vice-President. They both received a majority of the Electoral votes. But each had seventy-three votes, and neither was, in consequence, elected. In such a case, the House of Representatives must elect. The Federalists disliked Jefferson and vigorously opposed him. On the thirty-sixth ballot, however, Jefferson received the votes of ten States out of sixteen and was elected. For seven days the House had been in continuous session and the country was in such a state of excitement that there was danger of civil war. In order to prevent a recurrence of the conditions which obtained in 1796 or of the dangers incident to a contest like that of 1800, the twelfth Amendment was proposed by Congress and after ratification was declared in force, September 25, 1804. This provides, as already seen, that the Electoral votes must be cast separately for President and for Vice-President.

Minority Presidents.

In ten Presidential elections, while the successful candidate has received a majority of the Electoral votes, he has failed to receive a majority of the popular votes and is known as a minority President. Such a condition has happened so frequently that suggestions have been made looking towards the abolishment of the system of Electoral Colleges by amending the Constitution in such a manner as to provide for election by a direct popular vote.

The qualifications for the two offices are naturally the same.

Section 1, clause 4. Qualifications for President and Vice-President.

No person, except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Both officials must be natural-born citizens of the United States. The exception that a person might become President who was a citizen of the United States at the time of the adoption of the Constitution was eminently just. At that time there were many notable men, among them Alexander Hamilton, who though foreign born had rendered efficient services in the winning of independence and in the organization of the government. It would have been an ungracious act were they excluded from any office in the gift of the people. Residence abroad, as a minister or other official under the government, does not disqualify a person from becoming President.

The chief reason for creating the office of Vice-President seems to have been to provide for the emergency of a vacancy in the Presidency.

Section 1, clause 5. Vacancies.

In case of the removal of the President from office or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

Congress, by an act of 1792, further provided for the Presidential succession. This act declared that in case

Presidential succession.

of the removal of the President by impeachment or in case of the death, resignation, or inability * of both the President and the Vice-President, the succession shall devolve on the President *pro tempore* of the Senate, and in case there were no President of the Senate upon the Speaker of the House. Either of these officers was to act as President until the disability was removed or a new President elected. But the contingency that a vacancy in the Presidency and Vice-Presidency might happen when there would be no President of the Senate or Speaker of the House was unprovided for.† There was another weakness inherent in this law; viz., that the succession of either of these officers to the Presidency might bring into power a different political party. By an act of 1886, Congress provided that the Presidential succession should be in the following order: the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Attorney-General, the Postmaster-General, the Secretary of the Navy, and the Secretary of the Interior. When the Secretary of Agriculture was made a member of the Cabinet, in 1889, his name was added to this list. In case a Cabinet officer becomes President, he holds the office for the unexpired term.

Succession established in 1886.

Section 1, clause 6.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor

* The question of what constitutes disability has not been settled. President Garfield performed only the single executive act of signing his name on an extradition paper from July 2 to September 19, 1881, and yet the fact of his inability to discharge the duties of President was not established. Neither was there disability in the case of President McKinley between September 6 and the day of his death, September 14, 1901.

† From March 4 to October 10, 1881, there was no President of the Senate, and from March 4th to December 5th, of the same year, there was no Speaker of the House of Representatives. Had Vice-President Arthur been removed from office for any cause before September 19th, the date of the death of President Garfield, there would have been no President from September 19th to October 10th.

diminished during the period for which he may have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

Congress fixed the annual salary of the President at $25,000. It remained the same until the year 1873 when it was raised to $50,000. The wisdom of fixing his salary so that it may not be increased or diminished during his term of office is apparent. Otherwise he would become a dependent upon the favor of Congress. The custom has been established that no President shall receive a gift from any civil body such as a city council, a State legislature, or a foreign state. In addition to his salary, the President is provided with an "executive mansion," the "White House," which is furnished at the expense of the government.

Salary of the Vice-President.

The salary of the Vice-President was fixed at $5,000 in 1789. This was changed several times before 1874 when it was made $8,000, the amount still received.

Cost of the Executive branch of the government.

The maintenance of the Executive branch of the government costs less than $150,000 each year. This includes the salaries of the President, of the Vice-President, and of the President's private secretary; the purchase of furniture, carpets, fuel, care of green houses, binding and printing done by order of the President. In the year 1901, the English government voted about $4,000,000 for the annual use of the royal household. The Czar of Russia receives $6,500,000 annually in addition to revenues derived from 1,000,000 square miles of crown domains. The President of France receives $231,600 annually.

Special fund for the President.

A private fund, known as the "emergency fund" is provided for our President each year by Congress. This money which varies in amount, $63,000 having been appropriated in 1899, may be expended as the President dictates. Neither Congress, nor any other authority, has the right to question the uses to which it is put. Indeed there is never an account given of its expenditure. Some of the purposes for which it is used doubtless include the expenditures incident to the annual diplomatic breakfast given by the Secretary of State; special entertainments given by the President to noted foreign visitors; and the employment of

officials to carry on some investigation relative to National affairs whose salaries have not been otherwise provided for and whose negotiations should be secret.

In 1898, owing to the war with Spain, Congress passed a special measure placing in the hands of President McKinley $50,000,000 to be used as a "defence fund." An appropriation of such magnitude for which there was not to be an account given has never before been made in the history of our Nation.

Defence fund.

Inauguration Day.

One of the most notable of our civic festivals occurs on the fourth of March of each fourth year, when the President and the Vice-President are formally invested with their offices. Thousands of people go to Washington to witness the inaugural exercises. The Constitution makes no further provision than that the President take the oath of office and enter upon his duties at a prescribed time.

Before he enter on the execution of his office he shall take the following oath or affirmation:

Section 1, clause 7.

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United Sta'es."

It has been established by custom that the oath is administered by the Chief Justice of the United States at the east front of the Capitol, but the oath might be administered by any other magistrate having the power of administering oaths. The Vice-President takes the oath of office shortly before in the presence of the Senate of the United States. After taking the oath, the President gives his inaugural address, which outlines the policy he purposes to carry out in the execution of his duties.

SUPPLEMENTARY QUESTIONS AND REFERENCES.

1. *a.* For some of the problems connected with the Electoral Colleges in the history of elections, see Rev. of R's, 23: 66–69.
 b. What is the method used in counting the Electoral votes? Edmund Alton, Among the Law Makers, 88–89.
2. *a.* Do you agree with Mr. Bryce that the tendency is to select men for President who have not been prominent? Bryce, American Commonwealth, I, chapter 8.
 b. Was the present President notable before his election? In what ways?
 c. What were the chief causes for the success of his party?
 d. How many Electoral votes were required for election? He received how many? Did he receive a majority of the popular votes?
 e. How many Electors were there from your State? For whom did they vote? How is this majority in your State to be accounted for? Election of 1900, Rev. of R's, 22: 673–674; 655–658; 664.

3. Would successful governors make good candidates for President? In what particulars do the offices resemble each other? Would you favor making the governor of your State President? Wilson, Congressional Government, 253, 254.

4. Under what conditions did Aaron Burr become Vice-President? Harrison, This Country of Ours, 82; Walker, The Making of the Nation, 185; Hart, Formation of the Union, 173.

5. Why was the election of John Quincy Adams of especial interest? What results followed? Burgess, The Middle Period, 140–141; Wilson, Division and Reunion, 18.

6. State the chief points connected with the "disputed election" of 1876. Wilson, Division and Reunion, 283–286; Johnston, American Politics, 233–237.

7. What is the meaning and significance of "amendment by usage"? Can you give other examples of amendment in this way? Bryce, American Commonwealth, I, chapter 34; Wilson, Congressional Government, 250.

8. Where was Alexander Hamilton born? Under what conditions did he come to the United States? What services did he render in the organization of the government? Lodge, Alexander Hamilton, American Statesmen Series.

9. Give the names of the Presidents who have died in office. By whom were they succeeded?

10. Why was the "defence fund" of $50,000,000 necessary? Forum, 25 : 267–275.

11. Interesting accounts of inaugural incidents and personages:

a. Inauguration Scenes and Incidents, Century Mag., 53 : 733–740.

b. Davis, The Inauguration, Harper's Mag., 95 : 337–355.

c. Inauguration events of 1901, Rev. of R's, 23 : 405–406.

CHAPTER XXIV

POWERS AND DUTIES OF THE PRESIDENT

"UNITY of plan, activity, and decision are indispensable to success; and these can scarcely exist, except when a single magistrate is entrusted exclusively with the power." This is especially true in military affairs, hence the provision:

Story, On the Constitution, 827.

The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

Article II, section 2, clause 1. The President commander-in-chief.

Fears were expressed in the State conventions when considering the ratification of the Constitution lest the President might, under this provision, take charge of the army and navy in person, and as a dictator endanger the liberties of the Nation.

The monarch of Great Britain is commander-in-chief of the army and navy and militia; he has power to declare war, and in time of war can raise armies and navies and call out the militia. Parliament may check his action only by the refusal to vote supplies. The Emperor of Germany must obtain the consent of the Bundesrath, or upper house, before he may declare offensive war. The President of France may not declare war without the advice of the Chambers.

Military powers of other rulers.

Reprieves.

The temporary suspension of the execution of a sentence is called a reprieve. By means of a reprieve, the President may gain time to look into the evidence more carefully in order to ascertain whether there is good reason for granting the requested pardon.

Complete release from a sentence is secured by a pardon. The power to pardon also carries with it the right of commuting the sentence. By this, a decree calling for imprisonment for life may be reduced to a fixed term of years, or a death penalty may be mitigated to imprisonment for life, etc.*

Section 2, clause 2. Treaties.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.

While the power to conclude treaties seems to be without restriction, it is implied that no treaty shall in any way interfere with the authority of the Constitution. The usual steps in the negotiation of treaties are as follows: 1. In time of peace they are conducted at the capital of the nation that begins the negotiation. If this is in Washington the terms are considered by the Secretary of State and the minister of the other nation. If in a foreign capital, our minister acts under instructions sent him by the Secretary of State. At times one or more special ministers are sent abroad for the purpose of negotiating for a treaty. 2. In time of war, the minister of the nation with which we are at war leaves the United States. The interests of his nation are then intrusted to the minister of some neutral power, and through this minister negotiations for peace are usually begun. 3. The treaty of peace at the close of a war

* President Harrison considered, during his term, 779 pardon cases, not including reprieves. Of these 527 were granted in whole or in part. President Cleveland acted on 907 such cases and granted 506 in whole or in part.

is generally negotiated in some neutral country by special commissioners appointed by the belligerent nations.

In all cases, the President exercises general control over the negotiation and framing of treaties. After an agreement has been reached, the treaty is sent to the Senate. It is discussed in Executive Session, in which all matters pertaining to it are kept secret until a resolution of the Senate removes the decree of secrecy. The Senate may approve, reject, or modify the terms. If amendments are made, they must be agreed to by the President and the other nation interested. When a treaty has been finally approved by the officials of both countries, duplicate copies of it are made in parchment. Both of these copies are signed by the chief officers of each country and the copies are then exchanged. This is called the "exchange of ratification." An official copy of the treaty is thus secured by each nation. The President then publishes the treaty, accompanied by a proclamation, in which it is declared to be a part of the law of the land.

Treaties requiring appropriations. Cooley, Constitutional Law, 156, 157.

The question is sometimes asked, when a treaty agrees to pay money, must Congress make the appropriations? It has been answered as follows: "When moneys are to be paid by the United States, they can be appropriated by Congress alone; and in some other cases laws are needful. An unconstitutional or manifestly unwise treaty, the House of Representatives may possibly refuse to aid; and this, when legislation is needful, would be equivalent to a refusal of the government, through one of its branches, to carry the treaty into effect."

Section 2, clause 2. Executive power of appointment.

He shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public ministers and Consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments

are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

Section 2 clause 3. *The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.*

In addition to the Ambassadors, other public ministers and Consuls and judges of the Supreme Court who receive their offices through nomination by the President and the consent of the Senate, there are a large number of other officers whose positions have been established by law who are appointed in the same way. Among the most important of these officers are the heads of the executive departments, Assistant Secretaries, Treasurer of the United States, Commissioner of Internal Revenue, Inter-State Commerce Commissioners, Comptroller of the Currency, Superintendents of Mints, Commissioner of Patents, Commissioner of Pensions, Pension Agents, Collectors of Customs and Internal Revenue, Land Agents, Indian Agents, District Attorneys, Marshals, Territorial Governors, Postmasters whose salaries are $1,000 and over, and all Military and Naval Officers, unless otherwise ordered by law.

Congress has vested the appointments of certain inferior officers as follows: The President appoints the clerks in his office; the judges appoint the officers of their own courts and the heads of the departments appoint their subordinates with the exception of some of the principal ones, whose appointment is secured through nomination by the President and confirmation by the Senate.

All of the nominations sent by the President to the

Senate are submitted to appropriate committees, as Postmasters to the Post-Office Committee, Ambassadors to the Committee on Foreign Affairs. The report of the committee is considered in executive or secret session and the nomination is then voted on. If the vote is adverse, the President must make another nomination.

Action of the Senate on nominations.

In making his appointments, the President is largely dependent upon the advice of the head of that department under whose direction the officer will come, or upon the recommendation of the Representatives and Senators of his party from the State in which the office is located. This power of official patronage through which political assistants in a State may be rewarded with a Federal office has become so burdensome that many Congressmen complain of it and express the desire to be freed from its exactions.

Official patronage.

There has grown up an almost invariable custom, known as Senatorial Courtesy. By it, no appointment can be confirmed unless it meets the sanction of one or both of the Senators of the State in which the office is located, provided they are members of the party then in control of the Senate.

Senatorial Courtesy.

During the first forty years of our government, the views of the founders with regard to appointment and removal from the civil service were generally upheld. It was evidently their intention that postmasters, collectors of the revenues, and officials of this nature were to be regarded as clerks or agents appointed to assist in carrying on the government. It was believed that these non-political offices should be filled without regard to any personal or political favor and that an officer might retain his position so long as he rendered faithful and efficient service. The rule advocated by Madison that the President might remove officials without the consent of the Senate was acknowledged by Congress.

Removal from office

Under its operation, the entire number of removals from office between Washington's first administration and that of Jackson was only seventy-four, and five of the officers removed were defaulters.

Rotation in office.

It was during this period that William Henry Crawford, Secretary of the Treasury, hoping to pave the way for his nomination as a Presidential candidate secured the passage in 1820 of the "four year tenure act" by which most of the officials of the National government who collected and paid out public money were to have their terms of office limited to four years. Thus was made possible the dangerous political device, known as "rotation in office." Webster, Clay, Calhoun, and other statesmen spoke of the evils growing out of such a law, but it is still in force.

Fourteenth Report United States Civil Service Commission, 1896-97, 36.

The Spoils System.

But the "spoils system," as it is usually understood, did not become a permanent feature of our government until Jackson became President. This system, by which appointive offices are to be regarded as bribes or rewards for partisan services, was in use in Pennsylvania as early as 1790, and was introduced into New York by 1800. It was W. L. Marcy of the latter State who, in defending the system before the United States Senate, first used the expression "to the victors belong the spoils of the enemy." President Jackson made the usage National by changing 2,000 officials during the first year of his administration. It was natural that President Van Buren, who as Secretary of State under President Jackson said, "We give no reasons for our removals," should carry on a similar policy. The Whigs denounced the abuse of the civil service on the part of their opponents, and promised, if elected, to make the needed reforms. But the pressure upon them was too great, for no sooner were they given power by the election of 1840 than the sacrifice of Democratic office-holders began. From this time

Jackson, American Statesmen Series, 162.

down to 1883, whenever there was a change of administration, and especially when this meant the victory of a different political party, a "clean sweep" of the officers was thought to be necessary.

The evils of the system were indicated in the reports of special committees appointed by the different Congresses; and public opinion finally compelled Congress to pass an act, March 3, 1871, authorizing the President to frame and administer, through a commission, such rules as he thought best for the regulation of admission to the civil service. President Grant was in favor of the act and appointed a commission to carry on the competitive examinations for testing the efficiency of candidates applying for office. In 1874, Congress refused to make any further appropriation for the work of the committee.

Act of March 3, 1871.

January 16, 1883, Congress passed the "Civil Service Law." This act established the United States Civil Service Commission, which was to be composed of three members, not more than two of whom should belong to the same political party. Other provisions of the act and the rules for carrying it out are: That there shall be open, competitive examinations for testing the fitness of the applicants for the public service in the departments at Washington, and in the custom-houses and post-offices where at least fifty officials are employed; that when a vacancy exists in any office in either of these classes it shall be filled from the three applicants graded highest in the list of those who have passed the competitive examination; that the final appointment shall not be made until after a trial of six months in the office, and that the *original* appointments at Washington shall be apportioned among the States, Territories, and District of Columbia, upon the basis of population. The law does not extend to positions out-

The Pendleton Bill.

side the Executive branch of government, to positions for which appointment is made by the President with the consent of the Senate, or to places of unskilled labor. The President is given the power to direct the further extension of the "classified service," or positions which are to be filled by persons who have taken the examinations.

Civil Service Commission Report, 1900–1901, 14.

The number of offices originally included under the act was about 14,000. The classified offices reported June 30, 1902, numbered 121,000, and those which were unclassified or excepted 116,000. Some 72,498 of the unclassified offices were fourth-class post-offices in which a salary of less than $1,000 is paid.

The ordinary civil service examinations are held twice each year at such places throughout the country as are designated by the Commission. Much has been accomplished since the law went into effect, but it is to be hoped that the system will at an early date be extended to the offices still unclassified,* and that the effective reform work already done in some of our States and cities† will become general throughout the country. Two other provisions of the act have also brought about a vast improvement in our civil service. One of these provides that official authority and influence shall not be used to coerce the political action of any citizen; and the other, that no person in the public service is under obligation to contribute to any political fund or to render any political service.

Rule for removals.

The President may remove an officer during the session of the Senate by nominating, and by and with the advice and consent of the Senate, appointing his successor.

* During the years 1901–1902 there were included in the competitive system the rural free delivery service, permanent employees of the Census Office, and those additional employees necessary because of the war with Spain.

† See pp. 32–33.

If the removal is made during the recess of Congress, the newly-appointed officer receives his commission and enters upon his duties at once. If, when the Senate convenes, it refuses to confirm the appointment, the President makes another nomination. A most important order was issued July 27, 1897, which provides that "No removal shall be made from any position subject to competitive examination except for just cause and upon written charges filed with the head of the department or other appointing officer, and of which the accused shall have full notice and an opportunity to make defence." An act of 1866, still in force, provides that "No officer in the military or naval service shall, in time of peace, be dismissed from service except upon, or in pursuance of, the sentence of court-martial, to that effect or in commutation thereof."

Civil Service Commission Report, 1896–97, 24.

When an office becomes vacant during the recess of the Senate, the President appoints as in the case of removal during the recess. If the Senate fails to act on the nomination before the adjournment, the President must then issue a new commission to the same or another person.

Vacancies.

He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive Ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Article II, section 3. Duties of the President.

The most important duty of the President is to see that all laws passed by Congress are faithfully executed. Laws are useless unless they are enforced, and it is

Enforcement of the laws.

chiefly for the performance of this task that the Executive was originally created. It is not contemplated that this duty shall be performed by him in person, but through officials who are directly responsible to him. The United States marshals and their deputies exercise a wide influence in seeing that the laws are enforced. They usually act under an order from a United States court, but may, at times, act without such a writ. If necessary, the President may send the army and navy of the United States and call out the militia of the States to overcome any resistance to Federal law.

Presidential messages.

By means of the annual message sent to Congress at the opening of the session, and special messages on particular occasions, the President is enabled to call attention to the legislative needs of the country. The plan of having a message read in each House by the clerk or secretary was introduced by President Jefferson. Presidents Washington and Adams addressed, in person, Congress assembled in joint session. Various reasons have been alleged for this change. It is said that President Jefferson was a poor speaker, and that he regarded the formal address as monarchical.

Special sessions.

The power of calling Congress together on extraordinary occasions has been exercised ten times by as many different Presidents. The House of Representatives has never been called in special session alone. It has become the custom for the outgoing President to call the Senate in special session to act on the nominations of the Cabinet and other officials to be appointed by his successor immediately following the inauguration.

The President and foreign ministers.

The act of receiving a minister from a foreign state is equivalent to the acknowledgment of that state as an independent nation. A minister may be rejected or dismissed because he is personally objectionable; because there is no desire to recognize his state as

sovereign; or for the reason that unfriendly relations exist between the two nations. Should the executive of one nation send to the minister of another nation, during a period of strained relations, that minister's official papers, it would be regarded as equivalent to a declaration of war.

Supplementary Questions and References.

1. What have been some of the most important treaties entered into on the part of the United States?

2. For the treaty made at the close of the Spanish-American War, see Rev. of R's, 18 : 258, 371, 515, 631; 19 : 11, 261, 262, 266, 267.

3. In what ways may a treaty be abrogated? Harrison, This Country of Ours, 140, 141.

4. May a President have many of the privileges of private life?

 a. The President at Home, Harper's Mag., 89 : 196–203.

 b. Harrison, This Country of Ours, 177–180.

5. What are some of the official cares of the President?

 a. Our Fellow Citizen of the White House, Century Mag., 53 : 645–664.

 b. Harrison, This Country of Ours, 162–177.

6. Secure a copy of the last report of the Civil Service Commission and also Manual of Examinations for the Classified Service of the United States and look up the following:

 a. How many persons are included in the civil service of the United States?

 b. What proportion of them are included in the classified service?

 c. Does the Law of 1883 seem to have brought about satisfactory results?

 d. What offices have been included in the extensions of the Civil Service Law?

 e. What is the nature of the questions given in the examinations?

7. The Fifteenth Annual Report of the Commission (pp. 443–485) contains an account of the appointments and removals by the various Presidents from 1789 to 1883. Also an account of the growth of civil service reform in the States and Cities of the United States, pp. 489–502.

8. May a man be fitted for political preferment and not be competent to pass an adequate examination? Atl. Mo., 65 : 443, 444.

9. For other articles on civil service reform see : *a.* The Civil Service as a Career, Forum, 20 : 120–128. *b.* Lyman J. Gage, The Civil Service and the Merit System, Forum, 27 : 705–712. *c.* Some Popular Objections to Civil Service Reform, Atl. Mo., 65 : 433–444 ; 671–678. *d.* Roosevelt, An Object Lesson in Civil Service Reform, Atl. Mo., 67 : 252–257. *e.* George William Curtis and Civil Service Reform, Atl. Mo., 75 : 15–24. *f.* Lyman, Ten Years of Civil Service Reform, N. Am. Rev., 157 : 571–579. *g.* Rice, Improvement of the Civil Service, N. Am. Rev., 161 : 601–611. *h.* Roosevelt, Present Status of Civil Service Reform, Atl. Mo., 75 : 239–246. *i.* Roosevelt, Six Years of Civil Service Reform, Scribner's Mag., 18 : 238–247. *j.* The Purpose of Civil Service Reform, Forum, 30 : 608–619.

10. What was the Tenure of Office Act of 1867? Why did it become of great importance? Is it still in force? Wilson, Division and Reunion, 267, 270–271, 297. Harrison, This Country of Ours, 101–103.

11. What were the chief points discussed in the President's last annual message?

CHAPTER XXV

THE CABINET AND THE EXECUTIVE DEPARTMENTS

The Cabinet.

The President's Cabinet comprises the Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, Secretary of the Interior, and Secretary of Agriculture. These constitute the chief officials in the eight executive departments of our government. It was taken for granted that such departments would be formed, for the Constitution declares the President may require the opinions in writing of the heads of the executive departments, and again, that Congress may vest the appointment of certain inferior officers in the heads of these departments. But there was no thought in the Constitutional Convention of creating an institution whose members should meet regularly with the President and consult on matters outside of their own departments. The Cabinet, as a body, has no legal position as a part of the government. The different departments have been created by acts of Congress and their duties are defined by law. The President is not obliged to take the advice of his Cabinet, although their views usually have weight with him. No official record is kept of the meetings.*

* The following is taken from a conversation with President Hayes, reported by C. E. Stevens in his Sources of the Constitution of the United States, pp. 167–168. President Hayes said that he and other Presidents had occasionally acted independently of Cabinet advice; that the custom of the past had varied; and that some Presidents had been more influenced by their Cabinets than others. He said that President

Formation of the departments.

In 1789, the first Congress created the Departments of State, War, and the Treasury, also the office of Attorney-General. President Washington's Cabinet consisted of the officials whom he appointed to fill these four positions. The Navy Department was added in 1798. Prior to this time naval affairs had been under the control of the War Department. While a Post-Office Department was established in 1794, the Postmaster-General was not made a member of the Cabinet until 1829. In 1849, the Interior Department was created by grouping under it certain duties which had belonged to other departments. The Department of Agriculture was organized in 1862, and to it were assigned the duties appertaining to the agricultural interests of the country which had been performed through the State Department. It was not made a Cabinet position until 1889. In 1903, the Department of Commerce and Labor was authorized by an act of Congress. It has been advocated and it would seem desirable that a Department of Education should be formed.

Salaries and general organization of the departments.

Members of the Cabinet receive an annual salary of $8,000. The departments furnish an example of a splendidly organized system. That the business of each department may be more easily done, it is distributed among bureaus. The bureaus are again divided into divisions, and the divisions into rooms where the large numbers of clerks are to be found. At the head of each bureau is a commissioner, and of each division a chief. To complete the satisfactory working of the system, each clerk is made responsible to his chief of division; this

Buchanan was much worried by his Cabinet because not strong enough to insist on his own will, but that President Lincoln had decided on his Emancipation Proclamation without consulting his Cabinet, and read it over to them merely for suggestion and amendment. On two occasions, he (President Hayes) decided and carried out matters against the wishes of the secretary of a department affected.

chief, to his commissioner; and he, in turn, to the secretary, who is responsible to the President and to Congress.

The Department of State.

The Secretary of State is commonly called the head of the Cabinet. He is first in rank at the Cabinet table, and occupies the seat of dignity at the right of the President. Under the direction of the President, he conducts all negotiations relating to the foreign affairs of the Nation; carries on the correspondence with our representatives in other countries; and receives the representatives of foreign powers accredited to the United States, and presents them to the President. Through him, the President communicates with the Executives of the different States. He has charge of the treaties made with foreign powers, and negotiates new ones. He also has in his keeping the laws of the United States, and the great seal which he affixes to all Executive proclamations, commissions, and other official papers. He publishes the laws and resolutions of Congress, and issues and records passports. The Secretary of State has three assistant secretaries. There are six bureaus in the department: Diplomatic, Consular, and the bureaus of Indexes and Archives, of Accounts, of Foreign Commerce, of Rolls and Library.

Secretary of State.

The United States, in common with other nations, sends representatives to the foreign capitals. They are the agents through whom the Secretary of State communicates and negotiates with other powers. Such affairs are conducted through the Diplomatic Bureau. The United States has now about thirty-five Ambassadors and Ministers. Our representatives at the courts of England, France, Germany, Russia, Italy, Austria, and Mexico are known as Ambassadors. The Ambassadors to

Diplomatic Bureau.

Congressional Directory, 1900, 274–276.

the first four countries receive a salary of $17,500 each, and the Ambassador to Italy $10,000 per annum. The social demands made upon our Ambassadors are great and they are also obliged to provide for their places of residence. The salaries paid are not sufficient to meet these necessary expenses and are small in comparison with those paid by the European nations to officers of the same rank. Thus, the English Ambassador at Washington receives a salary of $32,500. Besides the English, the Germans, the Japanese, and some other nations have provided houses for their legations.

Consular Bureau.

A Consul is sent by the United States to each of the chief cities in the consular districts into which foreign countries are divided by our State Department. These Consuls, of which there are three grades, Consuls-General, Consuls, and Consular Agents, look after the commercial interests of the United States in those districts. They care for destitute American sailors and protect the interests of our citizens in foreign countries. In some of the non-Christian nations, such as China and Turkey, the Consuls also have jurisdiction over all criminal cases in which any American citizen may be a party. The importance of such a service to the country is self-evident. The appointment of these 1,200 officials, some 250 of them being Consuls-General and Consuls, is usually secured under party pressure. It would have a wholesome influence in our rapidly developing commercial interests were these positions placed in the classified service.

Congressional Directory, 1900, 277–294.

The Department of the Treasury

The Department of the Treasury is the most extensive and complex of the Executive Departments. In general, the Secretary of the Treasury has charge of the

finances of the nation. He is required to prepare plans for the creation and improvement of the revenues and the public credit and to superintend the collection of the revenue. He gives orders for all moneys drawn from the Treasury in accordance with appropriations made by Congress, and submits an annual report to Congress which contains an estimate of the probable receipts and expenditures of the government.

Secretary of the Treasury.

It is very important that the accounts of the government should be carefully scrutinized, and one of the six auditors connected with the Treasury Department must pass upon the accounts of every public officer who pays out money. Thus the auditor for the Treasury Department examines all accounts of salaries and incidental expenses of the office of the Secretary of the Treasury and all other offices under his immediate direction, such as the Treasurer and the Assistant Treasurers, Directors of the Mint and Assay Offices. Another auditor examines the accounts connected with the business of the Department of War. There is also an auditor for the Department of the Interior, one for the Navy Department, one for the Department of State, of Justice, and of Agriculture, and one for the Post-Office Department. The auditor for this last department has 400 clerks under his direction. It is the largest accounting office in the world.

The six auditors.

The Comptroller of the Treasury is required to revise the accounts of any auditor when an appeal is made from the auditor's decision by the claimant, by the head of the department interested, or by the Comptroller himself. He prescribes the forms of keeping the public accounts (except those relating to the postal service), and directs the recovery of debts due the United States which have been passed upon by the auditors.

Comptroller of the Treasury.

All of the money of the United States is under the

The Treasurer.

care of the Treasurer. He receives and pays it out upon the warrant of the Secretary of the Treasury or a designated assistant, redeems the notes of the National banks, and manages the Independent Treasury System. This system renders the Treasury Department practically independent of the banks of the country. It includes the Treasury at Washington and sub-treasuries, each in charge of an Assistant Treasurer, at Boston, New York, Philadelphia, Baltimore, Cincinnati, Chicago, St. Louis, New Orleans, and San Francisco. While the greater part of the money belonging to the government is found in these places, about 200 National banks have also been designated as public depositories.

The Register of the Treasury.

The Register of the Treasury signs and issues all bonds of the United States, and signs all transfers which convey money from the Treasury to the sub-treasuries or to any of the depositories.

The Chief of the Bureau of Engraving and Printing.

The Bureau of Engraving and Printing is one of the largest in the Department and employs about 1,600 people. It has been said that the products of this bureau, in the course of a single year, represent a sum equal in value to all the money in circulation in the United States; for here the engraving of the plates and the printing of all the United States circulating notes, bonds, revenue stamps, and postage stamps are done.

The duties of the Comptroller of the Currency and Commissioner of Internal Revenue are discussed on pages 186, 217 and 218.

Other officers of the Treasury Department.

Among the other leading officials of the Treasury Department are the Director of the Mint, General Superintendent of the Life Saving Service, Solicitor of the Treasury, Supervising Surgeon-General, and Supervising Architect.

The Life Saving Service, under a General Superintendent, is one of the most important branches of the Treas-

ury Department. More than 2,000 men are employed in the 273 stations, located generally at danger points on the oceans and the great lakes. Out of the 4,337 lives imperilled in the year 1903 in the disasters on water, only 24 were lost. Of the property involved, which was valued at $9,051,150, 88 per cent. was saved. It has been estimated that 225,000 lives have been saved through this service since it was founded in 1848.

The Life Saving Service.

Annual Report of the Secretary of Treasury, 1902–1903.

The Solicitor of the Treasury is the law officer of the department, and has charge of all prosecutions by the government arising out of the counterfeiting of the government securities, or of the infringement of customs-revenue, and of all suits for the collection of moneys due the United States, except those due under the internal-revenue laws.

Solicitor of the Treasury.

The Supervising Surgeon-General superintends the twenty-two marine hospitals where our sick sailors are cared for; conducts the quarantine service of the United States; and directs the laboratories for the investigation of the causes of contagious diseases.

Supervising Surgeon-General.

The Supervising Architect prepares the plans for government buildings and superintends their construction.

Supervising Architect.

Military and Naval Affairs.

The President has never assumed command of the army in person, but has delegated his authority to officers whom he selects. The Secretary of War and Secretary of the Navy exercise this authority during the time of war. They, in turn, select other officers to assist them. The orders given by the President to any officer are strictly imperative.

The Secretary of War has charge of the military affairs of the government under the direction of the President. He supervises all estimates of appropriations for the expenses of the department, for the purchase of all sup-

Secretary of War.

plies for the army, and for its transportation. He has under his supervision the military academy at West Point; and all the National cemeteries. He has the oversight also of river and harbor improvement; and of the prevention of obstruction to navigation. All chiefs of the eleven bureaus are regular army officers.

Adjutant-General.

The Adjutant-General issues orders for the muster of troops and for their movement, conducts the correspondence of the Department, and keeps the records.

Inspector-General.

The Inspector-General examines and reports on all places where United States troops are stationed; on public works carried on by army officers; and on the Military Academy and prisons.

Quartermaster-General.

Under direction of the Quartermaster-General, the army is transported, clothed, and equipped.

Commissary-General.

Food is supplied the army by order of the Commissary-General, and medicine by order of the Surgeon-General; and arms are supplied by the Chief of Ordnance.

Chief of Ordnance.

The arms used are manufactured chiefly in the United States arsenals, which are under the control of the War Department. The arsenals at Springfield, Massachusetts, and Rock Island, Illinois, manufacture rifles and carbines; and that at West Troy, New York, cannon and mortars.

Judge-Advocate-General.

The proceedings of all courts-martial and courts of inquiry are reviewed and recorded under the direction of the Judge-Advocate-General. He is also the legal adviser of the Secretary of War on questions relating to the army.

Corps of Engineers.

The Corps of Engineers is in charge of the Chief of Engineers. The duties of these officials are to locate and construct fortifications, military bridges, and lighthouses; and to carry on the work of the government for the improvement of harbors and navigable rivers.

The Chief Signal Officer supervises all military sig-

naling, such as communicating messages from distant points by the use of flags, the heliograph, flashlights, and similar devices. He is also charged with the supervision of the construction and operation of all military telegraph lines.

Chief Signal Officer.

The United States military academy at West Point was founded in 1802. The corps of cadets is made up of one cadet from each of the Congressional districts, one from each of the Territories and the District of Columbia, and one hundred from the United States at large. Prior to the year 1900 there were only ten cadets at large. The act of that year also provided that thirty cadets were to be named by the President directly, and the remainder apportioned among the States. They all receive their appointments from the President, but it has become the custom for the Representatives and Delegates to select those from the Congressional districts and the Territories. An appointment may be made after a competitive examination, which is the usual way, or without such a test, according to the wishes of the Representative. The cadet must be between seventeen and twenty-two years of age. Each receives $540 a year during the four years of his course. The course of study has for the principal subjects: mathematics, French, Spanish, drawing, tactics, physics, chemistry, geology, history, international and constitutional law, civil and military engineering, and the science of war. Upon graduation, the cadets are commissioned as second lieutenants in the United States army. In case there are more graduates than vacancies, those in excess are honorably discharged with the payment of one year's salary.

The United States military academy.

The Department of the Navy.

The duties of the Secretary of the Navy pertain to the construction, manning, arming, equipping, and employment of war-vessels. The work is distributed among the following bureaus: navigation, yards and docks, equipment, ordnance, construction and repair, steam engineering, medicine and surgery, supplies and accounts. The chiefs of these bureaus are officers of the United States navy.

Secretary of the Navy.

The United States naval academy.

The naval observatory at Washington is under the direction of the Secretary of the Navy; also the naval academy at Annapolis, established in 1846. One cadet is allowed in the naval academy for each member or delegate of the House of Representatives, one for the District of Columbia, and ten at large. Candidates for admission, at the time of their examination, must be between the ages of fifteen and twenty years. The nomination of a candidate to fill a vacancy is made upon recommendation of a Representative or Delegate, if made before July 1; but if no recommendation be made by that time, the Secretary of the Navy fills the vacancy by appointing an actual resident of the district in which the vacancy exists. The President selects the candidates at large and the cadet for the District of Columbia. At the conclusion of the six years' course, two of which are spent at sea, the graduates are assigned in order of merit to the vacancies that may have occurred in the lower grades of the line of the navy and of the marine corps. Cadets who are not assigned to service after graduation are honorably discharged and are given $500, the amount they have received each year of their course at the academy.

The Department of Justice.

Attorney-General.

The Attorney-General is the legal adviser of the President and of the heads of the departments. He supervises the work of all the United States District Attorneys and Marshals, and is assisted by the Solicitor-General. Unless otherwise directed, all cases before the Supreme Court and the Court of Claims in which the United States is a party are argued by the Attorney-General and the Solicitor-General. The law officers of the various departments are also under the direction and control of the Attorney-General.

The Post-Office Department.

Postmaster-General.

The Postmaster-General is at the head of this department. He appoints all of the officers of the department, with the exception of the four Assistant Post-

masters-General and 4,489 Postmasters, whose salaries are not less than $1,000 and whose appointments are made by the President with the consent of the Senate. The Postmaster-General may, with the consent of the President, let contracts and make postal treaties with foreign governments.

The Postal Union.

Since 1891, the United States has been a member of the Universal Postal Union. By this Union over fifty distinct powers became parties to an agreement by which uniform rates of postage were agreed upon and every facility for carrying mails in each country was extended to all the others.

Bureaus of the Post-Office Department.

There are four bureaus in the department, each in charge of an Assistant Postmaster-General. The general management of the post-offices with their clerks and carriers is under the direction of the first Assistant. The second Assistant looks after the transportation of the mails; the third Assistant furnishes stamps and has charge of the finances; while the fourth Assistant looks after the appointment of nearly 73,000 postmasters and directs the inspectors.

The Department of the Interior.

The Secretary of the Interior.

The Interior Department, under the supervision of the Secretary of the Interior, is one of the most complex and important of the departments. There are two Assistant Secretaries in the department, while at the head of the other offices are six Commissioners and two Directors.

Commissioner of the General Land Office.

The Commissioner of the General Land Office has charge of all the public lands of the government, and supervises the surveys, sales, and issuing of titles to this property (see p. 333).

Commissioner of Education.

The Commissioner of Education is the chief of the Bureau of Education. This bureau has charge of the

collection of facts and statistics relating to the educational systems and to progress along educational lines in the several States and Territories, and also in foreign countries. The reports issued by the bureau are of great value to those interested in education. The Commissioner has advisory power only, except in Alaska. Here, he directs the management of the schools.

Commissioner of Pensions.

The Commissioner of Pensions supervises the examination and adjustment of all claims arising under the laws of Congress granting bounty land or pensions on account of services in the army or navy during the time of war. That our government has not been ungrateful may be gathered from the report of the Commissioner for 1901. There were in that year 997,735 pensioners, to whom were paid approximately $140,000,000, or an amount equal to 24 per cent. of the total revenues of the government.

Commissioner of Indian Affairs.

Prior to 1871 the Indian tribes were treated as independent nations by the United States, but by a law of that year the general government was made the guardian of their interests. The Commissioner of Indian Affairs exercises a protecting care over these "wards" by directing the work of the Indian agents and of the superintendents of Indian schools.

Indian reservations.

There are some 200,000 Indians on the 177 reservations which are situated in the various States and Territories. The lands of these reservations are held in common; that is, the ownership is tribal rather than individual. It is the policy of the government, however, to bring about the allotment of lands "in severalty," and thus to encourage the Indians to adopt an agricultural life. The Indians are only partially self-supporting. Some tribes derive an income from funds which are the proceeds derived from the sales and cessions of their lands. The National government holds this money in trust for them, and, by direct appropriation, supplies the money, food, and clothing necessary to complete their support. The expenditures for the needs of the Indians in 1902 were

$9,736,186. Over one-fourth of this sum was spent in their education in Indian schools, numbering nearly 300, which are under the direct control of the department.

Commissioner of Railroads.

The Commissioner of Railroads secures regular reports from all companies whose roads have been aided in their construction by the government through grants of land or otherwise. He must also see that the laws relating to the management of those roads are strictly enforced.

Director of the Geological Survey.

The Director of the Geological Survey has gathered much valuable information through the examination of the geological structure, mineral resources, and mineral products of the United States. He has charge, also, of the survey of the forest reserves.

The Department of Agriculture.

Secretary of Agriculture.

The duties of the Secretary of Agriculture are: "To acquire and diffuse among the people of the United States useful information on subjects connected with agriculture in the most comprehensive sense of that word." The activities of the department are along many lines, as indicated by the names of the bureaus and divisions.

Bureau of Animal Industry.

One of its most important services is performed in the Bureau of Animal Industry, which inspects the greater part of the meat products exported to European countries. The law providing for this inspection was necessary because of the claim in European markets that diseased meats were shipped from the United States. An inspection is also provided for live animals intended for exportation and of animals imported. Much scientific work is also devoted to the study of the various diseases of animals.

In like manner, the Division of Vegetable Physiology

Division of Vegetable Physiology.

and Pathology is engaged in the study of diseases affecting trees, and that of Entomology in the investigation of injurious insects.

New bureaus.

Continuous advancement is being made by the government toward placing the agricultural pursuits upon a more scientific basis. Thus, Congress in 1901 recognized the value of the work done by changing the Divisions of Forestry, of Chemistry, and of Soils into bureaus. A Bureau of Plant Industry was also formed.

Biological Survey.

The Division of Biological Survey carries on the study of the geographic distribution of animals and plants and of the food habits of birds.

Division of Seeds.

Over $100,000 are expended each year by the Division of Seeds in the purchase of "rare and valuable" seeds, bulbs, and plants. These are distributed free throughout the country for the purpose of fostering the introduction of new and more valuable crops.

Public Road Inquiries.

Another important interest is carried on by the Office of Public Road Inquiries. Here experiments are made with regard to the best system of road-making and the best materials to be used for that purpose.

The Divisions of Botany and of Gardens and Grounds are also in the department.

Weather Bureau.

Through the Weather Bureau daily forecasts and warnings of storms are sent to over 50,000 different points; and storm signals are displayed at 300 places on our coasts. By its operation, millions of dollars are saved each year to the agricultural and maritime interests of the country. A recent decree of the Post-Office Department renders the reports of the bureau of still greater service. Slips of paper having the storm, frost, or other warnings printed on them are to be distributed by the rural mail carriers at the various houses in the districts affected.

The Department of Commerce and Labor.

Secretary of Commerce and Labor.

Because of the nature of the subjects assigned to this new department, it will rapidly become one of the most important of the departments. At its head is a Secretary. Strictly speaking, there have been only two bureaus created for the department, the others having been transferred from the other departments. The new bureaus are those of Corporations and of Manufactures. The Commissioner of Corporations is expected to investigate the organization, conduct, and management of the business of corporations and other combinations engaged in interstate commerce, and to see that all anti-trust laws enacted by Congress are enforced. The duties of the Commissioner of Manufactures, as defined by the law, are "to foster, promote, and develop the various manufacturing industries of the United States and markets for the same at home and abroad by gathering, compiling, publishing, and supplying all available and useful information concerning such industries and such markets, and by such other methods and means as may be prescribed by the Secretary or provided by law." The President is given the power to transfer to the department those bureaus in other departments which are engaged in scientific or statistical work, the Interstate Commerce Commission and the scientific divisions of the Agricultural Department being excepted. The offices which have been transferred are as follows: the Bureau of Statistics; Census and Immigration Bureaus; Bureau of Foreign Commerce of the State Department; the Bureau of Standards of Weights and Measures; Bureau of Navigation and the Shipping Commissioners; the Steamboat Inspection Service; Fish Commission; Coast and Geodetic Survey; and Lighthouse Board.

The Chief of the Bureau of Statistics.

The Chief of the Bureau of Statistics collects and publishes the annual statistics on commerce.* These reports are of such a character that they are invaluable to the President in the preparation of his messages; and they are used extensively by the Heads of Departments, members of Congress, and the public. Tariff laws, special legislation for particular industries, and all international trade treaties are also based on these compilations. The greatest demand is for the Annual Statistical Abstract, which presents in a condensed form the history of the commerce of the United States for a number of preceding years.

The Commissioner of Immigration.

The Commissioner of Immigration superintends the work done by the inspectors of immigrants.† Every immigrant must undergo a rigid examination in order to ascertain whether he belongs to any of the prohibited classes (see page 198). Each immigrant pays a tax of one dollar, which sum is used to defray the expenses of the bureau.

There have also been created at different times commissions and boards having executive functions, but which are not connected with any of the departments. They are as follows: the Civil

*Monthly reports are made by our Consuls on improvements in agricultural and manufacturing processes. These reports also give information regarding good markets for our products and of the best markets in which to purchase foreign products. Among scores of similar subjects, our Consuls reported in February, 1904, on the following: Agricultural Machines in Russia; American Apples in France; American Boots and Shoes in New Zealand; Radium Industry; Wages and Cost of Living in Germany.

†During the year ending June 30, 1903, there arrived in the United States 857,046 aliens, traveling in the steerage. This was an excess of 208,303 over the preceding year; 185,667 could neither read nor write; 233,546 were Italians; 82,343 were Poles; and the other chief nationalities in order of numbers were Scandinavians, Hebrews, Germans, Irish, Slovak, Croatian-Slavonian; 8,769 were denied admission at the ports; 5,812 of these were paupers; 1,773 had some communicable disease; and 1,086 were contract laborers.

Service Commission, described on p. 277; the Interstate Commerce Commission, described on p. 202; the Board on Geographic Names, the Bureau of American Republics, and the Industrial Commission. Special officials and boards are in charge of the National Museum, the Bureau of Ethnology, the Library of Congress, the Government Printing Office, and the Smithsonian Institution. The Government Printing Office was established in 1861. Facilities for publishing the Congressional debates, reports of the executive departments, etc., have been greatly multiplied from year to year. Some 15,000 copies of the President's annual message and 12,000 copies of the abridgment of the message, 40,000 copies of the report of the Commissioner of Education, 54,000 of the Congressional directory, and other reports in similar quantities are printed each year for free distribution. A large extension of the Government Printing Office was authorized in 1900 and $2,429,000 were appropriated for that purpose. It is said that with this extension it will constitute the largest and best equipped printing establishment in the world.

Additional commissions and boards.

In 1829, James Smithson, an English scientist, gave some $500,000 to the United States for the purpose of founding at Washington, "an establishment for the increase and diffusion of knowledge among men." The Smithsonian Institution is notable because of its Museum, which offers scientists such excellent opportunities for original investigation.

Supplementary Questions and References.

1. *a.* Does the President select the members of his Cabinet from among former members of Congress? Would this be desirable?

 b. Have the members of the Cabinet ever been allowed to appear before Congress in the interests of their own departments? Would this be desirable? Wilson, Congressional Government, 257; Walker, The Making of the Nation, 92; Bryce, American Commonwealth, I, chapter 9; Atl. Mo., 65 : 771-772.

 c. Who are now the heads of the executive departments? Were they prominent in National affairs before they were selected for these positions?

d. What reasons can you give for the belief that other departments should be added to the Cabinet?

e. In 1901, a bill was introduced in the House of Representatives which provided for an increase of the annual salary of the Vice-President to $25,000 and that of each member of the Cabinet to $15,000. What reasons can you give for or against such a change?

2. *a.* What was the history of the State Department prior to 1789? Harrison, This Country of Ours, 182–187.

b. Give a list of the Presidents who have been Secretaries of State. How do you account for this policy in the first years of our government, and not at a later time? Name some of the other prominent Secretaries of State.

3. *a.* Who are our Ambassadors? Can you give the name of any foreign Ambassadors in Washington? See Congressional Directory.

b. The methods by which our ministers are selected, take possession of their offices, and are presented at foreign courts are described in Curtis, The United States and Foreign Powers, 15–21.

c. The duties of ministers. Curtis, The United States and Foreign Powers, 22–26.

d. Ought our Ambassadors to be changed every four years? Our Need of a Permanent Diplomatic Service, Forum, 25: 702–711.

e. Are our Ambassadors given adequate salaries? Diplomatic Pay and Clothes, Forum, 27: 24–32; Curtis, The United States and Foreign Powers, 13, 14.

4. From a consular report learn what the duties of a Consul are. Curtis, The United States and Foreign Powers, 30–33.

5. For an account of our consular service, a comparison with that of foreign nations, and a consideration of some of the weaknesses in our system, see Curtis, The United States and Foreign Powers, 28–30; Evils to be Remedied in Our

Consular Service, Forum, 22 : 673–683 ; A Business Man and the Consular Service, Century Mag., 60 : 268–271 ; Our Inadequate Consular Service, Forum, 25 : 546–554 ; Faults in Our Consular Service, N. Am. Rev., 156 : 461–466 ; Reforms in the Consular Service, N. Am. Rev., 158 : 412–422 ; Foreign Trade and our Consular Service, N. Am. Rev., 162 : 274–286 ; Consular Service and the Spoils System, Century Mag., 48 : 306–311 ; Abuses in our Consular System Arising through Appointment, Atl. Mo., 85 : 455–466, and 669–683 ; How Other Countries Do It, Century Mag., 57 : 604–611 ; Some Evils of our Consular Service, Atl. Mo., 74 : 241–252 ; A Plea for Consular Inspection, Forum, 30 : 28–34.

6. What is the Great Seal of the United States, and what is its use? Harrison, This Country of Ours, 199–200.

7. What is the particular work of the Marine Department ; of the Steam-boat Inspection Service ; of the Marine Hospital? Lyman J. Gage, Organization of the Treasury Department, Cosmop., 25 : 355–365.

8. What is the work of the Bureau of Engraving and Printing? Spofford, The Government as a Great Publisher, Forum, 19 : 338–349.

9. What is the extent of our Merchant Marine? Should it be increased? Statistical abstract of the United States, 1900, 437–450.

10. From the appendix to the last Finance Report get the chief points connected with the work of the following officials : Treasurer, Report, 1898, appendix, 1–20 ; Chief of the Division of Special Agents, 842–860 ; Chief of the Secret Service Division, 861–867.

11. From the last report of the Bureau of Statistics find answers for the following : The expenditures of the government in the different departments ; in what branches there was a large increase in 1899 ; value of merchandise imported and exported ; amounts of coin, wheat, cotton, wool, and iron produced, imported, and exported ; the chief nationalities of immigrants, and comparison of the total number with previous years.

12. Are our coasts well defended? Harrison, This Country of Ours, 225.

13. Describe the work of the President, Secretary of War, Secretary of the Navy, and of the other Cabinet officers at the outbreak of war. Cosmop., 25 : 255–264.

14. For illustrated articles on Education at West Point and Annapolis, see Outlook, 59 : 839–849, 825–837.

15. *a.* What have been the chief facts connected with the history of the Pension Bureau? The United States Pension Office, Atl. Mo., 65 : 18–23.

b. How does the amount of money paid for pensions by the United States compare with that of other nations? Forum, 12 : 645–651.

c. Has the pension policy of our government been a wise one? N. Am. Rev., 153 : 205–214 ; 156 : 416–431 ; 618–630 ; Century Mag., 42 : 790–792 ; 179–188 ; 46 : 135–140 ; Forum, 12 : 423–432 ; 15 : 377–386 ; 439–451 ; 522–540.

16. For accounts of the new Congressional Library, see Century Mag., 53 : 682–694 ; 694–711 ; Atl. Mo., 85 : 145–158 ; Cosmop., 23 : 10–20.

17. What is the special value of the work of the Bureau of American Republics? Forum, 30 : 21–27.

CHAPTER XXVI

THE JUDICIARY

HAMILTON characterized the lack of a judiciary as the crowning defect of government under the Confederation. "Laws," he wrote, "are a dead letter without courts to expound and define their true meaning and operation." Judicial powers were vested in the Continental Congress or in the agents of that body. The conviction that the Federal Judiciary should constitute one of three independent parts of the government was general in the Constitutional Convention, and after a brief discussion, this was provided for as follows:

Lack of a judiciary under the Confederation. "The Federalist," No. 22.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Article III, section 1.

Congress carried out the provisions of this section by passing the Judiciary act of 1789. This act provided that the Supreme Court should consist of a Chief Justice and five Associates. District Courts and Circuit Courts were also created by it and their functions as inferior courts were defined.

Judiciary act of 1789.

The Supreme Court, at present, consists of the Chief Justice and eight Associate Justices. It holds one session annually, at Washington, beginning on the second Monday in October and continuing until about May 1.

The Supreme Court.

District Courts.

The territory of the United States has been divided into judicial districts, none of them crossing State lines and each having a District Court.

Congressional Directory, 1908, 293, 294.

Indian Territory, New York and Texas have each four districts; Alabama, Pennsylvania, and Tennessee, three each; Arkansas, California, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Mississippi, Michigan, Missouri, North Carolina, Ohio, Virginia, Wisconsin, and West Virginia two each; and the remaining States have each a single district. New Mexico and Oklahoma constitute a district, and also Alaska, Arizona, and Hawaii. Generally there is a judge for each district, but a single judge is at times assigned to two districts.

United States District Attorneys and Marshals.

A District Attorney and Marshal are appointed by the President for each District. Their duties pertain both to the District and Circuit Courts of the District. The United States District Attorney is required to prosecute all persons accused of the violation of Federal law and to appear as defendant in cases brought against the government of the United States in his district. The United States Marshals execute the warrants or other orders of the United States District and Circuit Courts and, in general, perform duties connected with the enforcement of the Federal laws which resemble the duties of sheriffs under State laws.

Circuit Courts.

Established by the act of 1789, each Circuit Court was, at first, presided over by a Justice of the Supreme Court and a District Judge. The policy has been to have as many Circuit Courts as there are Justices of the Supreme Court. It was not until 1869 that a Circuit Judge was provided for each of the nine circuits. The area of a circuit was determined by grouping several districts together; thus, the seventh circuit includes the districts of Indiana, Northern and Southern Illinois, Eastern and Western Wisconsin. Circuit Courts may be held by a Judge of the Supreme Court assigned to

that circuit, by a Circuit Judge, or by the District Judge of the district in which the court is held, or by any two of these or by all of them sitting together. The law requires that the Justice of the Supreme Court shall attend court in each district of his circuit at least once in two years. The first and fourth circuits have each two Circuit Judges; third, fifth, sixth, seventh, and ninth three each; and the second and eighth four each. The increase in the number of cases to be tried before the Circuit Courts made the appointment of additional Circuit Judges necessary, and by the law of 1891, also, nine Circuit Courts of Appeals were established for each of which an additional Circuit Judge was provided. The Circuit Courts of Appeals consist of three Judges each, any two constituting a quorum. The Judges eligible to sit in one of these courts are: the Supreme Court Judge assigned the Circuit, the Circuit Judges, and the District Judges of the Circuit.

Congressional Directory, 56th Congress, First Session, 266, 267.

Circuit Courts of Appeals.

The Court of Claims was established in 1855 and consists of a Chief Justice and four Associates. It holds an annual session in Washington.

Court of Claims.

That the Judiciary should be independent of parties and of other influences cannot be questioned. Hence the wisdom of the provision that United States Judges shall hold their offices during good behavior and shall receive a compensation for their services which shall not be diminished during their continuance in office. The Constitution states that Judges of the Supreme Court shall be appointed by the President with the consent of the Senate. It has been interpreted that the Judges of the inferior courts are to receive their appointments in like manner.

Terms and salaries of Judges.

By an act of Congress of 1903, the salary of the Chief Justice was fixed at $13,000 per annum; that of Associate Justices, $12,000; Circuit Judges, $7,500; and

District Judges, $6,000. Any Judge who has reached the age of seventy years, and has served ten years, may retire on full pay for life.

We are next to consider the jurisdiction of the several courts that have been described.

Section 2, clause 1. *The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting Ambassadors, other public ministers and Consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;—between citizens of different States;—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.*

Section 2, clause 2. *In all cases affecting Ambassadors, other public ministers and Consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.*

Speaking of the position of the Supreme Court in our judicial system, Mr. Bryce says:

Bryce, American Commonwealth, I. 237-240. "No feature of the government of the United States has awakened so much curiosity in the European mind, caused so much discussion, received so much admiration and been more frequently misunderstood, than the duties assigned to the Supreme Court and the functions which it discharges in guarding the ark of the Constitution."

A careful consideration of clause 1 of this section shows the wide extent of the powers of the United

States Courts. It shows too the desirability of having all such cases under their jurisdiction rather than under the authority of the State courts. This jurisdiction applies to two classes of cases. One class has to do with the nature of the questions involved, as in all those cases arising out of the Constitution, laws, and treaties of the United States, and admiralty and maritime cases. The other class of cases arises because of the parties to the suits, as, Ambassadors, Consuls, two or more States, citizens of different States, etc.

Extent of the judicial power.

The provisions here made, that the judicial power shall extend to controversies between a State and citizens of another State, and between a State and the citizens or subjects of a foreign state, were doubtless intended to apply only to suits in which a State should attempt, as plaintiff, to secure justice in a Federal Court. But, contrary to expectation, suits were early brought *against* some of the States by citizens of other States to enforce the payment of debts and other claims. In the notable case of Chisholm *vs.* Georgia in 1793, Chisholm, a citizen of North Carolina, began action against the State of Georgia in the Supreme Court of the United States. That court interpreted the clause as applying to cases in which a State is defendant, as well as to those in which it is plaintiff. The decision was received with disfavor by the States, and Congress proposed the XIth Amendment to the Constitution, which was ratified in 1798 and reads as follows:

State as plaintiff. "The Federalist." 81.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign state.

Amendment XI.

The Supreme Court has original jurisdiction in "all cases affecting Ambassadors, other public ministers, and

Consuls, and those in which a State shall be a party." By original jurisdiction is meant that these cases may be begun in the Supreme Court. Other cases come to the Supreme Court from the inferior United States Courts or from the Supreme Courts of the States and territories by appeal or by writ of error. In these cases the Supreme Court is said to have appellate jurisdiction.

Original and appellate jurisdiction.

A writ of error is defined to be "a process which removes the record of one court to the possession of another court, and enables the latter to inspect the proceedings, and give such judgment as its own opinion of the law and justice of the case may warrant."

Writ of error. Story, Commentaries, II, 527.

It is difficult in brief space to define minutely the province of each court. The following accounts, therefore, give only a general description.

The Circuit Courts of Appeals are given final jurisdiction in certain cases appealed to them from the District and from the Circuit Courts, such as those arising under the patent, revenue, and criminal laws, as well as admiralty and other cases in which the opposing parties to a suit are an alien and a citizen, or are citizens of different States. The Supreme Court has thus been partially relieved from an over-crowded docket. But jurisdiction in these cases may be assumed by the Supreme Court if it desires to do so.

Jurisdiction of inferior courts. Circuit Courts of Appeals. 26 Statutes at Large, 828.

Circuit Courts have original jurisdiction in patent and copyright cases, and in cases brought by the United States against National banks, and they have exclusive jurisdiction in capital cases. "The jurisdiction of the District Courts chiefly embraces criminal cases, admiralty cases, bankruptcy proceedings, suits for penalties, and the like." Ordinary civil actions are within the jurisdiction of the Circuit Courts, where the amount involved, exclusive of interest and costs, exceeds $2,000. Where the amount is $2,000 or less, the case must be tried in a State court.

Circuit Courts. Harrison, This Country of Ours, 327.

District Courts.

The Court of Claims "shall hear and determine all claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States, which may be suggested to it by a petition filed therein; and also all claims which may be referred to said Court by either House of Congress." Claims for pensions may not be brought before this Court. The judgments of the Court are referred to Congress and appropriations are made to cover them.

Court of Claims. 10 Statutes at Large, 612.

The Courts of the District of Columbia and of the Territories are under the control of Congress, but are not Federal Courts. Judges of these courts are appointed in the same manner as other United States Judges, but their appointment is only for a term of four years.

Territorial Courts.

The right of trial by jury in all criminal cases had been insisted upon by Englishmen for centuries prior to the formation of our Constitution. There were two branches to the system, the grand and the petit juries. Each performed the same duties as they do now. The Constitution provides that

The right of jury trial.

The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crime shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section 2, clause 3.

This clause was attacked by the opponents of the Constitution in the State conventions. It was believed that the Constitution did not furnish adequate safeguards against unjust prosecutions. Because of this agitation, Congress, in its first session, proposed the following Amendments, which were duly ratified by the several States:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indict-

Amendment V.

ment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime may have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Amendment VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Infamous crimes. Cooley, Principles of Constitutional Law, 291.

Authorities have had difficulty in giving an exact definition of an infamous crime. That given by Judge Cooley is the most satisfactory. He says: "But the punishment of the penitentiary must always be deemed infamous, and so must any punishment that involves the loss of civil or political privileges."

A grand jury consists of from twelve to twenty-three men. "They are sworn to inquire and present all offences committed against the authority of the National government within the State or district for which they are impanelled, or elsewhere within the jurisdiction of

the National government. They sit in secret and no accusation can be made by them without the concurrence of at least twelve. An indictment is a written accusation of an offence drawn up by a prosecuting officer on behalf of the government and laid before the grand jury." "A presentment is an accusation by a grand jury of an offence upon their own observation and knowledge, or upon evidence before them, and without any bill of indictment laid before them at the suit of government." In the case of a presentment, the party accused cannot be held to trial until he has been indicted. After hearing the evidence, if the grand jury concludes that the accusation is not true they write on the back of the bill, "not a true bill" or "not found." The accused, if held in custody, is then given his freedom but he may be again indicted by another grand jury. If the grand jury decides that the accusation is true they then write on the back of the bill, "a true bill" or "found." The indicted person must be held to answer the charges made against him.

Presentment and indictment of the grand jury. Story, Commentaries, § 1784.

The accused must be given a public and speedy trial before an impartial jury, known as the petit jury, consisting of twelve men from the district wherein the crime was committed. The decision must be unanimous before a verdict can be rendered. The accused is given a copy of the indictment in which the nature of the accusation is clearly set forth and is granted time in which to prepare for his defence. Equally just and significant are the provisions that he shall be confronted by the witnesses against him; may compel the attendance of witnesses in his favor; and may employ counsel for his defence. In case he is not able to pay for his own counsel the judge appoints one whose services are paid for out of the public treasury. If the verdict has been rendered by a jury and the judgment

Rights of the accused

pronounced, the accused cannot be again brought to trial on the same charge.

Right of eminent domain.

The right of "eminent domain" is properly vested in the government. By this right private property may be taken for public uses after the payment of a just price. The rights guaranteed the accused by these Amendments are chiefly derived from the principles of the common law (see p. 109).

Treason under the common law.

Treason has always been regarded as one of the worst of offences and is punished by the severest penalties. Under the early common law, it rested with the judges to declare what acts were treasonable. Judges became mere tools in the hands of despotic rulers and were induced to declare certain conduct treasonable which had not previously been so regarded. In the time of Edward III, the English Parliament attempted to prohibit these abuses by giving a definition of treason. The substance of two of the five articles of this statute were made a part of our Constitution in the following:

Article III, section 3, clause 1. Definition of treason.

Treason against the United States shall consist only in levying war against them or in adhering to their enemies, giving them aid or comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Who are traitors.

Parties to a conspiracy cannot be considered traitors until they have actually assembled men for the carrying out by force of some treasonable purpose. "All persons who then perform any act, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered traitors. And one is adherent to the enemies of the country, and giving them aid and comfort, when he supplies them with intelligence, furnishes them with provisions or arms, treacherously surrenders to them a fortress and the like."

Cooley, Principles of Constitutional Law, 288.

Not only was the punishment of treason under the English common law most brutal, but the corruption of the blood and forfeiture of the estate of the offender followed. "By corruption of blood all inheritable qualities are destroyed; so that an attainted person can neither inherit lands nor other hereditaments from his ancestors, nor retain those he is already in possession of, nor transmit them to any heir. And this destruction of all inheritable qualities is so complete that it obstructs all descents to his posterity whenever they are obliged to derive a title through him to any estate of a remote ancestor."

Punishment of treason.

Story, Commentaries, 1299.

The one limitation, by the Constitution, on the power of Congress to declare the punishment of treason restrains that body from extending the consequences of guilt beyond the person who commits the crime:

"The Federalist," 43.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

Section 3, clause 2.

The trial, on the charge of treason, is intrusted to a tribunal appointed by Congress. Congress has decreed that the punishment on conviction shall be death, or, at the discretion of the court, fine and imprisonment.

Supplementary Questions and References.

1. What are the names of the members of the Supreme Court at present? Congressional Directory, 1900, 266; Rev. of R's, 23 : 20.

2. How large are the circuit and district in which your home is located? Who are the judges? Congressional Directory.

3. Under what conditions may a case be appealed from the Supreme Court of the State to the United States Su-

preme Court? Bryce, American Commonwealth, I, 228–230 (232–234).

4. How is the fact, that conflicts between the authority of the Federal and the State Courts do not arise, accounted for? Bryce, I, 234–235 (238).

5. Are the United States Courts influenced in their decisions by politics? Bryce, I, 259–261 (265–267).

6. Describe the influence of John Marshall as Chief Justice.

a. John Marshall, American Statesman Series, chapters 10 and 11.

b. Bryce, I, 261 (267).

c. Lodge, John Marshall, Statesman, N. Am. Rev., 172 : 191–204.

d. John Marshall, Atl. Mo., 87 : 328–341.

7. Who have been the other Chief Justices?

8. Show how the development of our Constitution by interpretation has been brought about. Bryce, I, 366–375 (376–385).

CHAPTER XXVII

RELATIONS BETWEEN THE STATES, AND BETWEEN THE FEDERAL GOVERNMENT AND THE STATES

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof. Article IV, section 1.

The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. Section 2, clause 1.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime. Section 2, clause 2.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due. Section 2, clause 3.

The Constitution was intended to form a more complete bond between the States. This union would be weakened and give rise to endless litigation and injustice were the legislative acts, records, and proceedings of the courts of one State not given the same credit in every State as in that where they originated. Legislative acts are made authentic by having the State seal affixed. The record of a court is "proved" through the signature of the clerk and judge and affixing of the seal of the court where there is one. State records.

Privileges of citizens. Paul *v.* Virginia, 8 Wallace, 180.

In speaking of the privileges granted to the citizens of a State in every other State, Mr. Justice Field says: "It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. . . . Special privileges enjoyed by citizens in their own States are not secured in other States by this provision."

Fugitive criminals.

Extradition is the delivering up to justice of fugitive criminals by the authorities of one State or country to those of another. The necessity for such a regulation is evident, for a criminal from justice might easily escape into a neighboring State. "The responsibility of determining whether the person demanded is a fugitive from the justice of the demanding State rests with the Executive of the State or Territory in which the accused is found. The case of the demanding State should be presented in some official form; either by official copy of an indictment, or by a complaint under oath. The right to demand surrender and the obligation to comply with the demand extend to all crimes and offences made punishable by the laws of the State where the offence was committed; but if the Governor of the State in which the accused is found refuses to surrender him he cannot, through the judiciary, be compelled to deliver him up." The privilege of extradition between nations is secured by treaty relations.

Justice Miller on the Constitution, 637, 638.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the

legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

Section 4. Protection of the States by the National government.

It was natural that the Constitution should guarantee to the States the form of government with which the framers of that instrument were most familiar and which would be most in keeping with the Federal union they hoped to see established.

Any protection afforded a State against invasion signifies the protection of the Nation. Since the States are forbidden to keep troops and ships of war in time of peace, they must, if invaded, be dependent upon the general government. In such a case the President has been authorized by law to use the army and navy of the United States, or call the militia into service, to furnish the needed protection, even if the State has not applied for aid.

Protection against invasion.

Each State is supposed to possess the power of enforcing its own laws, and is of right protected in the exercise of this prerogative. As has been said: "By the requirement of a *demand* for aid every pretext for intermeddling with the internal concerns of any State, under color of protecting her against unlawful violence, is taken away." * In case of an insurrection, the State militia is sent by order of the Governor to suppress it. Should they fail to restore order, the legislature, or the executive (when the legislature cannot be convened), applies to the President for military aid. If the uprising has interfered in any way with the carrying out of the laws of the Nation, the President may, at his discretion, send troops to suppress it without having been asked to do so by the legislature or the Governor. There was a notable illustration of this point during the time of the Chicago riots, in July, 1894.

Protection against domestic violence.

* Cooley, Principles of Constitutional Law, 198.

In addition to destroying property belonging to the railways centring in Chicago, the striking employees prevented the free movement of the trains. Mr. Altgeld, then Governor of Illinois, did not provide against these abuses, and President Cleveland ordered the United States troops under General Miles to suppress the rioting. The President, who was severely criticised by Mr. Altgeld, justified his sending the troops on the following grounds: 1. That the processes of the Federal courts could not be executed; 2, that the transportation of the United States mails was obstructed; and 3, that the laws on interstate commerce were not enforced.

President Cleveland *vs.* the Governor of Illinois.

The United States Supreme Court took the same position as President Cleveland in a case which grew out of these riots. Mr. Justice Brewer in delivering the opinion of the court said: "We hold that the government of the United States is one having jurisdiction over every foot of soil within its territory and acting directly upon each citizen; that while it is a government of enumerated powers, it has within the limits of those powers all the attributes of sovereignty; that to it is committed power over interstate commerce and the transmission of the mails, and that these powers have been assumed and put into practical exercise by the legislation of Congress

In re Debs, petitioner, 158 Davis, 599.

CHAPTER XXVIII

TERRITORIES AND PUBLIC LANDS

When the Constitution was adopted, the National government possessed a vast tract of land lying north of the Ohio River and extending to the Great Lakes and the Mississippi River. This region had been owned by several of the original States (*viz.*, Massachusetts, Connecticut, New York, and Virginia); but their claims were conflicting and each finally agreed to cede its portion to the general government. This occurred during the period of the Confederacy. Although entirely without legal authority to do so under the Articles of Confederation, Congress established a Territorial government for the "Territory of the United States lying north and west of the Ohio River," by the enactment of the Ordinance of 1787. The first Congress under the Constitution re-enacted this Ordinance, and thus entered at once upon the government that it has since maintained over the Territories of the United States. Congress exercises this power by virtue of the authority expressly delegated to it in the following clause.

The North west Territory.

The power to govern Territories.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Article IV, section 3, clause 2.

The Territorial form of government is more simple than State government chiefly because of the sparseness of settlement. The executive is a governor appointed

for four years by the President and Senate. The administrative officers — secretary, treasurer, auditor, attorney-general, and superintendent of instruction—are likewise appointed. The judiciary consists of judges appointed in the same manner. The Territorial legislature has two houses, the Council and the House of Representatives, the members of which are elected, from districts, by popular vote. The legislature resembles a State legislature in its control of Territorial affairs; but its laws may be modified or entirely annulled by Congress. In this way Congress maintains its complete authority over the internal policy of the Territory. The people have no voice in National affairs, but they elect a delegate to Congress, who may debate but not vote.

Territorial form of government.

This account describes the government of an organized Territory; these are, at the present time, Oklahoma, New Mexico, Arizona, Hawaii, and Porto Rico. There is a lower form of government, through which many Territories have passed before they were fully organized. In these cases there is no legislature, but the governor, assisted by the judges or a council, has legislative powers. Such Territories are called "unorganized," and are now two in number, Alaska, and Indian Territory.

Unorganized Territories.

Alaska.

The executive officers of Alaska are the Governor, Attorney-General, and Surveyor-General, the last acting as Secretary of the Territory. The judiciary consists of three district judges. All these officers are appointed by the President and Senate. There is no legislature. Congress enacted, in 1900, a complete code of civil laws for Alaska.

Indian Territory.

Indian Territory is the home of the "Five Civilized Tribes" of Indians. The Cherokees, Choctaws, Creeks, Chickasaws, and Seminoles formerly lived in the States east of the Mississippi River and were removed to this Territory in the years between 1830 and 1840. Oklahoma was included in the Indian Territory until 1890, when it was given a separate Territorial government. There has never been a single, uniform government for Indian Territory. Previous to the year 1898, it was the theory that each of the five tribes was an independent "nation," owning and governing its own share of the Territory independently of the United States govern-

ment, except for treaty relations. Each had an organized government, republican in form under a written constitution. The legislatures, courts, and civil processes resembled very closely those of the State governments. Citizenship in each Indian "nation" was determined by its own laws. Still, the theory of Indian sovereignty within the limits of the United States did not correspond with the facts; for the treaties admitted the supremacy of the United States government and provided for the interference of its officers in the affairs of the Indian "nations."

In accordance with these treaties, no white man might reside within the limits of the Territory without the consent of the Indians. But whites acquired citizenship there by marriage, and they, together with citizens of mixed blood, became the owners of much land. Still other whites obtained, either by fraud or by lease from the Indians, farm lands and building sites for numerous flourishing towns and cities. The whites had no legal right to participate in the Indian governments; yet they acquired a dominating influence in them, chiefly by corrupt methods. The white population increased until they were four or five times as many in numbers as the Indians. This unfortunate condition of affairs became intolerable and Congress finally assumed control, altering entirely the basis of government in Indian Territory. Since 1898, Congress has prescribed the general code of laws for the Territory and has established within its limits several United States courts. The Indian governments will continue for a few years only, their legislation being subject to approval by the President.

In our most recently acquired possessions, Porto Rico and the Philippines, the processes by which our government has been established are interesting. The war with Spain which began April 21 and ended August 12, 1898, was followed by a treaty which transferred the ownership of these islands absolutely to the United States. The treaty was signed by the commissioners at Paris, December 10, 1898, ratified by the United States Senate, on February 6, and finally declared to be in effect April 11, 1899. After the defeat of the Spanish forces, and during the progress of these negotiations, the authority of government in these islands was vested in the President of the United States, by virtue of his position as Commander-in-chief of the Nation's military and naval forces. A military form of government was thus established until Congress should by law erect a civil government.

The Spanish acquisitions.

The President appointed General Otis military governor of the

The Philippines. Philippines and named a special commission of five members to investigate the condition of affairs in those islands. In the early months of 1900 a new Philippine commission of five members was appointed, headed by Judge William H. Taft. They proceeded to the Philippines for the purpose of establishing the civil government of the islands when that should be authorized. In April, General McArthur became military governor. Later, an amnesty proclamation was issued in favor of all those, hitherto in insurrection against the United States, who would abandon such action. Under authority of the commission, municipal governments were erected in many cities of the Philippines, and provincial governments in several provinces. The Philippine Civil Government Law of 1902 substituted civil for military government over all the islands and parts thereof which are not inhabited by Moros and other non-Christian tribes. Whenever the President shall issue a proclamation declaring that complete and general peace exists in the Philippines, a census shall be taken. Two years after the census a general Legislature will be constituted, with the Philippine Commission as its upper house; the Assembly to be composed of delegates elected by popular vote.

Temporary Government Law, 1902.

The Sulu Islands. The Sulu Islands were never under actual Spanish rule, so a separate treaty was made between their Sultan and the United States, in August, 1899. The sovereignty of the latter government was acknowledged and its protection against outside powers was extended over the islands. The former native government was retained, its officers receiving salaries from our government. The United States may occupy and control such points in the islands as its interests seem to demand. The native institutions of slavery and polygamy were not interfered with, though any slave may purchase his freedom.

For the island of Guam a regular government was established, under direct control of the naval authorities of the United States.

Porto Rico. In Porto Rico, General Henry was appointed governor-general; he was soon succeeded by General Davis. A commission was appointed to examine affairs in the island and report recommendations for its government. Congress passed (April, 1900) a bill establishing for the Territory of Porto Rico a civil government very similar to that already described as common in the organized Territories. There is a governor appointed by the President of the United States; also a secretary, attorney-general, treasurer, auditor, commissioner of the interior, and commissioner of education.

The legislature is composed of two houses; the upper house, or Council, includes the officers just mentioned (except the governor) and five other persons appointed by the President. Five of the eleven members of this Council must be natives of Porto Rico, and all hold office for four years. The House of Delegates consists of thirty-five members elected triennially by the voters. A supreme court and a district court of the United States for Porto Rico constitute the judiciary. There is elected by the people a Resident Commissioner to the United States, who, unlike the delegates from other Territories, has no seat in Congress, but rather has official relations with the President. The inhabitants of Porto Rico who were previously subjects of Spain are declared to be citizens of Porto Rico and are entitled to the protection of the United States; but those who choose to do so may retain their allegiance to Spain.

For a number of years the Samoan Islands were under a government maintained jointly by Germany, Great Britain, and the United States. This arrangement was terminated by a treaty proclaimed in 1900. The United States obtained absolute possession of three islands, the only one of importance being Tutuila. A military government was here established. These islands, the Philippines, and others in the western Pacific that belong to the United States, are officially designated as the "insular possessions" of the United States.

Our Samoan possessions.

The Hawaiian islands were annexed to the United States as the result of a treaty negotiated in 1897. This treaty was not ratified by the Senate, but instead a joint resolution was passed by Congress, in July, 1898, accepting, on the part of the United States, the cession of those islands made by their government. A board of commissioners was then appointed to recommend legislation for the new acquisition. No action was taken by Congress until April, 1900; in the meantime the independent republican government of Hawaii continued to act. The government created by Congress is similar to that of the other organized Territories of the United States. A delegate is sent to Congress. Voters in Hawaii must be able to read and write either the English or the Hawaiian language.

The Territory of Hawaii.

The relations of the United States with Cuba were quite different from those sustained with the islands mentioned above. At the opening of the Spanish War Congress disclaimed any intention of annexing Cuba, or of exercising any control over the island "except for the pacification thereof." Congress also asserted its determination, "when that is accomplished, to leave the government and con-

Cuban relations.

trol of the island to its people." When the war was over, a military government was declared in Cuba, under the authority of the United States, with General Brooke as Governor-General. He was later succeeded by General Wood. A census was taken, showing a population of 1,500,000. Municipal governments, with elected officials, were established in various parts of the island. In August, 1900, the Secretary of War issued a proclamation ordering a popular election, to take place on September 15th, following, at which delegates were to be elected to a Constitutional Assembly. This met on November 3, 1900, and proceeded to form a republican government for Cuba. The independence of Cuba was formally declared on May 20, 1902.

The Constitutional Assembly.

In the settlement of the permanent relations that are to exist between Cuba and the United States, the government of the latter insisted that an agreement upon certain matters should be embodied in the Cuban Constitution; these provisions are that Cuba shall not impair her independence by treaty or other relations with foreign governments; that she shall not contract debts that are beyond her ability to pay; that the United States shall be allowed to intervene if Cuban independence is threatened or domestic insurrection occurs; that Cuba will carry on the plans already made for the sanitation of her cities; that the status of the Isle of Pines shall be left to future adjustment by treaty; and that Cuba will sell or lease to the United States lands necessary for coaling and naval stations.

The power to acquire territory.

By what authority has the United States acquired the territory that was not in its possession in 1789? This question, arising for the first time in connection with the Louisiana purchase, was of vital importance. It has been argued that section 3 of Article IV applies only to the territory belonging to the United States at the time of the adoption of the Constitution; and that, consequently, acquisitions were made not by virtue of any power delegated to the United States in the Constitution, but rather by virtue of the fact that the United States is a Nation, and so entitled to exercise this sovereign power as any other nation might. But it is not necessary to make this contention. There is the highest

authority, the Supreme Court speaking through its greatest Chief Justice, for holding a different view. This is found in a decision of Chief Justice Marshall, who said, "The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty."

The circumstances attending the acquisition of Porto Rico and the Philippines, and the peculiar character of their inhabitants, gave rise to grave Constitutional problems concerning their government by the United States. Similar questions had previously arisen in relation to the government of the Territories. Congress had established precedents, and the Supreme Court had rendered many decisions upon this subject; but the laws and decisions were at certain points incomplete and contradictory. When Congress began to legislate for the islands acquired from Spain, the National government faced the entire problem of its relation to Territorial governments.

The government of Territories.

Under existing tariff laws (the Dingley tariff), duties were collected, at ports in the United States, on tobacco imported from Porto Rico, and on diamonds brought from the Philippines. The importers questioned the power of the government to do this, and sued for the recovery of the taxes, carrying the cases to the Supreme Court. Other cases arose, involving the power of Congress to pass the act of 1900 (the Foraker act), levying duties on goods imported into Porto Rico from the United States. The clauses of the Constitution particularly involved in these cases were two: first, the clause of section 3, Article IV, quoted at the beginning of this chapter; second, the clause of section 8, Article I, conferring upon Congress the authority to "lay and collect

Cases before the Supreme Court.

Questions involved.

taxes, duties, imposts and excises," but providing that "all duties, imposts and excises shall be uniform throughout the United States." The court was bound to decide the meaning of the term "the United States" in these clauses, and to define the powers of Congress over the Territories. It was necessary, also, to review and settle the entire question of the status of their inhabitants with respect to the powers and rights granted in the Constitution.

Argument against the government.

The attorneys who held the action of the government to be unconstitutional based their argument before the Supreme Court upon the principle that the United States government possesses only such powers as are delegated to it in the Constitution. The Constitutional limitations upon National authority must be regarded as binding, wherever this authority extends. The term "United States" includes not only the States, but the Territories, and all places subject to the jurisdiction of the United States as well. When territory is annexed, therefore, the Constitutional grants and limitations apply there, at once, as they do in the States. Duties collected in the Territories must be uniform with those collected in the States (Article I, section 8, clause 1). No duty may be levied upon goods shipped from a State to a Territory, because this would be a tax on exports, and so forbidden (Article I, section 9, clause 5). In governing the inhabitants of our Territories and insular possessions, the authority of Congress is limited by the Constitutional guarantees, such as that securing the right of trial by jury (Amendment VII).

Argument for the government.

In their argument for the government, the Attorney-General and his assistants interpreted the words "United States" to mean merely the States. They quoted in support of this view section 3 of Article IV, which gives Congress power to govern "the territory or other property *belonging to* the United States"; also, Amendment XIII, which speaks of "the United States or any place subject to their jurisdiction." The duties, imposts and excises levied by Congress are to be uniform "throughout the United States" only (Art. I, sec. 8, cl. 1); hence Congress may fix such rates as it pleases in the Territories and possessions. On this side of the case, it was admitted that the United States government has only delegated powers. But it was contended that the power to govern Territories is vested by the Constitution. (Art. IV, sec. 3, cl. 2) absolutely in Congress

The Constitutional limitations referred to restrict the power of Congress in the States ; but its powers over the inhabitants of the Territories, though based on the Constitution, are not subject to these limitations.

On the whole, the decision of the Supreme Court (June, 1901) upheld the contentions of the government's attorneys. The government was declared to be in error, however, in collecting duties according to the rates fixed in the tariff law of 1897 (Dingley tariff) upon articles imported from Porto Rico after the completion of the treaty with Spain (1899). After that treaty, Porto Rico was no longer a foreign country, so the tariff act mentioned did not apply to her products.

The Supreme Court's decision.

The Foraker act of 1900 was declared Constitutional. Porto Rico, although "belonging to" the United States is not a "part of" it. The Constitutional provision that duties shall be uniform throughout the United States does not apply to our Territorial possessions. The court laid down the principle that "the Constitution is applicable to Territories acquired by purchase or conquest only when and so far as Congress shall so direct." The inhabitants of these Territories are not citizens of the United States until made such by Congress.

We have so far considered the Territories as in a state of greater or less dependence upon the National government. Under what conditions and in what way may these relations be changed? The admission of Territories into the Union as States was contemplated before the adoption of the Constitution, for the Ordinance of 1787 provided that the Northwest Territory should be divided into States, and these were guaranteed admission into the Union. Doubtless, the framers of the Constitution regarded statehood as the ultimate destiny of all territory then belonging to the United States. This idea became the policy of the government in its treatment of the Louisiana purchase and the Mexican cession; Indian Territory alone has not been regarded as eligible for statehood in the near future. In the case of Alaska, and especially since the addition of our insular possessions,

The admission of Territories to statehood.

serious questions have arisen regarding the policy that is to be pursued. That the power to admit States belongs exclusively to Congress is evident from the language of the Constitution.

Article IV, section 3, clause 1.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor shall any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

The power of Congress.

A Territory cannot claim admission as a Constitutional right if Congress finds obstacles that seem to it insuperable. Nor is there any rule as to the population that a Territory should have before admission. Congress has often been guided in the exercise of this power by political considerations alone.

Methods of admitting States.

After a territory has applied for admission into the Union, two different methods have been pursued to complete the process. (1) Congress has passed an "enabling act"; the Territory then framed a constitution, which was submitted to Congress for approval. (2) The Territory has frequently taken the initiative by electing a convention which framed a constitution; with this in hand, the Territory then applied to Congress for admission. In either case, before giving its approval to the admission of a State, Congress must see that the constitution submitted contains nothing that is inconsistent with a republican form of government (see pp. 316–317). In addition, Congress has sometimes required the Territory to conform to certain conditions respecting boundaries, lands, and other matters.

The "territory and other property belonging to the United States" (see p. 319) includes more than the governmental divisions called "Territories" and "possessions." The United States owns vast tracts of land

that are situated not only in these Territories but also in many of the States. This land is regarded as property or public domain, and its disposition falls within the power of Congress under the clause a part of which has just been quoted.

Western cessions.

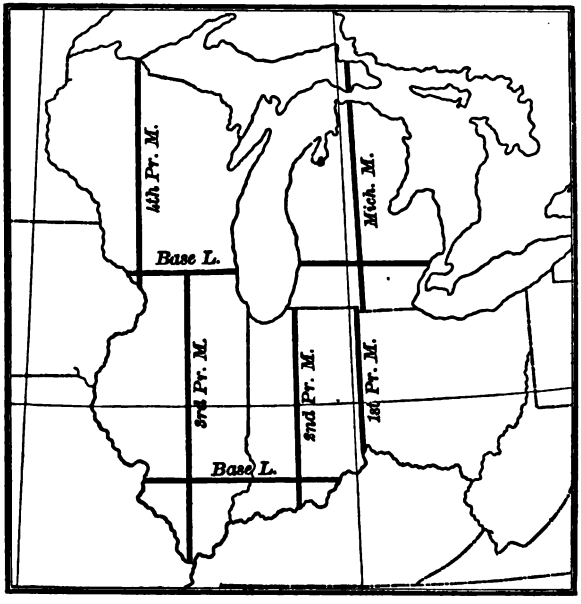
In the years following the adoption of the Constitution, North Carolina, South Carolina, and Georgia followed the example of the Northern States and ceded to the general government their claims upon territory extending westward to the Mississippi River. This was the region where the States of Tennessee, Alabama, and Mississippi have since been formed. As the United States came into possession of the western territory, all unoccupied lands * (except certain portions reserved by the original States for their own use) became the property of the National government. The same is true of all unoccupied lands in the Louisiana purchase and in all subsequent acquisitions of territory. So that the United States has become the possessor of many millions of acres. Its policy in dealing with this vast property has been of the greatest consequence in our history.

Government survey.

In the thirteen original States there was no uniform system of land survey, but each tract of land was surveyed as necessity required, generally after settlement had been made upon it. The tracts were of very irregular shapes. The boundary lines, usually starting from some natural object, were measured by rods or chains, running in certain directions as ascertained by the use of the compass. This method of survey is still in use in the eastern States. According to a law of 1785,

* By this is meant lands not then in the possession of Europeans. The Indian claim to the lands was partially recognized by the government; it acquired full title from the different tribes by purchase or by conquest.

a uniform system of "rectangular" survey was applied to all lands belonging to the United States. This survey has preceded settlers and has to some extent influenced the method of settlement and the nature of local government throughout the West. The lands surveyed have been divided into townships six miles square. For the boundaries of townships the law requires the



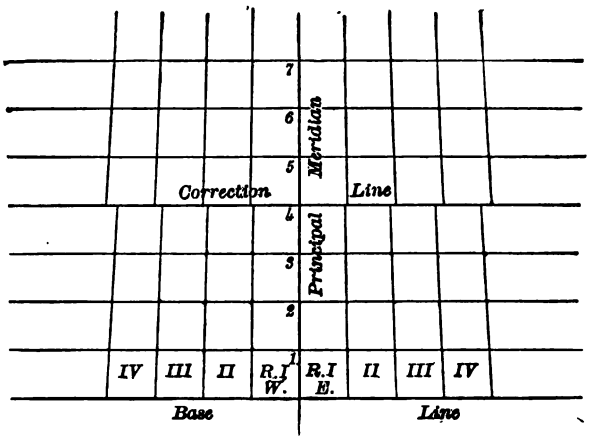
use of north-and-south and east-and-west lines. To secure starting points from which to run these lines, it was necessary to designate certain meridians as Principal Meridians and certain parallels as Base Lines.

The map indicates the location of Principal Meridians and Base Lines in the States north of the Ohio River. Starting, then, from any Principal Meridian, the tier of townships directly east is called Range I; the other

ranges are numbered east and west of that Meridian. Counting also from the Base Line, the townships are numbered 1, 2, 3, etc., both north and south. It thus becomes possible to locate precisely any particular township by a simple description: *e.g.*, township 5 north, Range VII east of the first Principal Meridian.

The convergence of meridians causes the townships to become less than six miles wide from east to west as the survey proceeds northward from any Base Line. This necessitates the running of standard parallel lines, or correction lines, at frequent intervals to be used as new Base Lines.

FIGURE 1.



To still further facilitate the sale and description of lands the law provides for exact methods of subdividing the township into sections, one mile square, numbered as in Figure 2.

Each section is subdivided into rectangular tracts known as halves, quarters, half-quarters and quarter-quarters. The designations of these divisions are by

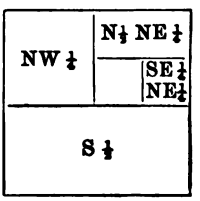
abbreviations and fractions (see Figure 3). The number of acres in each tract is easily computed.

The rectangular system of survey has been a great aid in the subdivision and location of farm lands; it greatly reduces the number of boundary disputes; it determines very largely the location of country roads. Moreover, the Congressional township has become, in a great many instances, the area within which the political township or town has been organized. This town, how-

FIGURE 2.—SIX MILES SQUARE.

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

FIGURE 3.—ONE MILE SQUARE.



ever, need not coincide with the Congressional township; it may be greater or smaller in area.

Land grants made to States.

Upon the admission of Territories into the Union, the ownership of the public lands does not pass to the new States, but remains with the National government. This government protects its interests by requiring the States to guarantee in their constitutions that they will never interfere with the primary disposal of the soil by the United States; and also that they will not tax National lands located within their limits. On the other

hand, the National government has pursued a most liberal policy in making grants of land, in large tracts, to the States for various purposes. This is the way in which the school lands of the States were acquired (see pages 94–96). Swamp and saline lands, besides other tracts, have been freely given to States to aid in the construction of roads, canals, and other public improvements.

The sale of public lands.

But the largest part of the Nation's domain has been retained and sold or given away by the government to land companies, railroad companies, and settlers. At present, land may be obtained through the General Land Office (Department of the Interior) either by direct purchase or under the homestead laws.

Before 1820, the minimum price of land was $2.00 per acre; the price was then reduced to $1.25. Some lands may still be purchased at that rate, while others are held at $2.50 per acre. The public domain of the United States open to settlement comprises (1900) 533,490,440 acres. This does not include lands located in Alaska, and in our new insular possessions. The greatest part of these lands are situated in the Rocky Mountain and Pacific Coast States and Territories; a large share are arid and can never be brought under cultivation.

The homestead law.

Under the homestead law, "any citizen of the United States, or any person who has declared his intention of becoming such, who is the head of a family, or has attained his majority, or has served in the army or navy in time of war, and is not already the proprietor of more than 160 acres of land in any State or Territory, is entitled to enter a quarter section (160 acres), or any less amount of unappropriated public land, and may acquire title thereto by establishing and maintaining residence thereon, and improving and cultivating the land for a period of five years." For the year 1900 the homestead entries amounted to 6,478,409 acres. The sales of public lands amounted to $4,379,858 received for 13,453,887 acres.

Many of the western railroads (notably the Northern Pacific, Union and Central Pacific, Atlantic and Pacific, and Southern Pacific) have been given immense tracts of land, amounting in the total to more than 150,000,000 acres. Somewhat more than one-

Railroad land grants.

half of these lands have been patented, *i.e.*, final conveyance of title has been made to the railroad companies or to others who have purchased the land from them. These grants consist of alternate sections lying within wide strips that cross the western part of the country, along the lines of the several railroads.

Arid lands.

A large part (332,000,000 acres in 1900) of the public domain is arid. How much of this may be reclaimed by irrigation is uncertain. "In 1902 Congress enacted a law providing that the proceeds from the sales of public lands in certain States and Territories should be expended by the National Government in the construction of irrigation works. The establishment of this policy marks an era in the development of our Western States."

Various reservations.

Many large tracts of land have been retained by the general government as reservations; these are not open to settlement. The forest reserves are intended as a protection for the sources of great rivers. Several National parks (including the Yellowstone and the Yosemite) preserve, for the common good of all, regions of great scenic beauty and scientific interest. Reservoir sites have been reserved in several localities, with a view to the establishment of future irrigation systems. Great tracts of land, located in many States, are preserved as Indian reservations.* Military reservations comprise the tracts lying adjacent to western military posts.

Supplementary Questions and References.

1. What were the circumstances under which the northwestern States ceded their lands? Hart, Formation of the Union, 107–109; Fiske, Critical Period, 187–199; Hinsdale, Old Northwest, chapters 11–14. See references below to McMaster, Schouler, etc., in topic 12.

2. What were the admirable features of the Ordinance of 1787? Walker, 39–40; Fiske, Critical Period, 203–207; Hinsdale, Old Northwest, chapters 15–16. The Ordinance itself is found in Old South Leaflets, No. 13.

3. What reasons seemed to make necessary the removal of the Indians beyond the Mississippi River? Schouler, III, 371–378, 477–480; IV, 233–235, 319–320; Wilson, 35–38; McMaster, IV, 175–183, 537–540.

* See the wall map of the United States, published by the General Land Office, Department of the Interior.

4. What is your opinion of our government's policy toward the Indians?

5. What is the character of the slavery that exists in the Sulu Islands? Outlook, 66 : 578–587.

6. What part of the total area of the United States is now open to settlement?

7. What should be the policy of the government toward public lands? The Remnant of Our National Estate, Forum, 27 : 347–354.

8. By which method is the land of your State surveyed? Obtain the surveyor's description of a piece of land in your locality. What States do not have the United States survey? Why not? Are there reservations in your State? The map published by the General Land Office shows in detail, Principal Meridians, Base Lines, land offices and reservations.

9. The government of Territories and possessions. Cooley, Principles of Constitutional Law, 35–36, 50–51, 170–174; Bryce, I, chapter 47; Atlantic Mo., 82 : 735–742; Arena, 21 : 84–90; Forum, 29 : 257–262; Judson, Rev. of R's, 19 : 67–75; 21 : 451–456; McMaster, Annexation and Universal Suffrage, Forum, 26 : 393–402; N. Am. Rev., 168 : 112–120; Outlook, 63 : 907–909; 966–968; 64 : 244–245; Hart, Brother Jonathan's Colonies, Harper's Mag., 98 : 319–328; Harrison, Status of Annexed Territory and its Inhabitants, N. Am. Rev., 172 : 1–22; The Government of Porto Rico, Forum, 28 : 257–267; 403–411; 30 : 717–721; The Supreme Court decision, Outlook, 68 : 337–339.

10. Our Indian problem, Forum, 18 : 622–629; 28 : 737–740; N. Am. Rev., 159 : 434–447; 160 : 195–202; 167 : 719–728; Outlook, 59 : 695–696; Grinnell, The Indians of Today; (Contains detailed account of Indians on Reservations.) Reports of Commissioner of Indian Affairs (Department of Interior); Abridgment of Messages and Documents; The Indian Territory—its Status, Development and Future, Rev. of R's, 23 : 451–458.

11. The Admission of States. Cooley, Principles of Constitutional Law, 175–183; Bryce, I, 555–556 (582–583).

12. Land Policy of the United States, McMaster, History of the United States, II, 476–478; III, 89–121;

Schouler, History of the United States, I, 97–101, 198–199; II, 74–75; III, 191–192; IV, 66–68, 152–156; Hart, Practical Essays on American Government, chapter 10; Donaldson, Public Domain. (A government publication containing the documentary history of our public lands, House Miscellaneous Documents, 1882–83, vol. 19.) West, The Public Domain of the United States. (Reprint from Yearbook of Department of Agriculture for 1898.) Reports of Commissioner of General Land Office (Department of Interior); Abridgment of Messages and Documents.

13. Upon the irrigation of arid lands, consult Rev. of R's, 8 : 394–406; 10 : 396–400; 17 : 612–613; Arena, 17 : 389–398; Pop. Sci. Mo., 50 : 424; Outlook, 66 : 337–344; Century Mag., 50 : 85–99; 51 : 742–758.

CHAPTER XXIX

AMENDMENTS TO THE CONSTITUTION

As already noted, it was practically impossible to amend the Articles of Confederation. The conviction was general, therefore, in the Constitutional Convention that some plan should be adopted by which the Constitution might be made to conform to the requirements of future conditions, as well as guard against changes too easily secured. Article V provides for amendments as follows:

Article V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Methods of proposing amendments.

Amendments to the Constitution may thus be proposed in two ways: by a vote of two-thirds of both houses or by a National convention called by Congress for that purpose on the application of two-thirds of the

State legislatures. The convention method has never been used in proposing amendments to the Constitution.

Ratification of amendments.

Amendments may also be ratified by either of two methods: by the legislatures in three-fourths of the several States, or by conventions in three-fourths thereof. When Congress has proposed an amendment, it has designated that the ratification should be by the State legislatures. The method used in proposing and in adopting amendments seems the best, for the bodies called upon to act may be easily summoned.

Permanent feature of the Constitution.

The most permanent part of the Constitution was secured through the provision that "no State, without its consent, shall be deprived of its equal suffrage in the Senate."

Number of amendments. American Historical Association Reports, V, 361.

More than 1,700 amendments to the Constitution have been proposed in an official way. Nineteen of these have been presented to the State legislatures for ratification and fifteen only have received the requisite three-fourths vote. These amendments have now the same force as the original Constitution.

Bill of Rights.

One of the chief arguments against the Constitution was that it did not contain a Bill of Rights, and consequently it was asserted that the rights of the individual citizen could not be maintained. As already noted (page 133) some of the States were induced to ratify the Constitution, even with this omission, providing they were given the privilege of recommending amendments. One hundred and eighty-nine propositions in the nature of amendments, many of them being repetitions, were presented by the various States to the first Congress. Seventeen amendments, largely selected from these, were proposed by the House of Representatives. Twelve were agreed to by the Senate and ten were ratified by three-fourths of the State legislatures. The

first ten amendments are frequently referred to, therefore, as "The Bill of Rights."

Amendment I. Freedom of religion, of speech, and of assembly.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The religious intolerance characteristic of the colonies and the presence of so many different sects doubtless led to this decree, by which the National government should be forever free from the disturbances which would follow should Congress have been given the right to set up a National religion. Our government, unlike that of many European nations, grants the greatest liberties, provided it can be shown that what was said or published was true and the facts were made known with good motives and for justifiable ends. After many contests in English history, the "right of petition" was finally assured in the Declaration of Rights of 1688. The principle was reasserted in many of the State constitutions, and, although inherent in a republican form of government, it was thought desirable to establish the right by making it a part of the Constitution.

Amendment II. Right of keeping militia.

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

The necessity for having a militia has been referred to on page 237. Fear of a monarch was genuine, and it was believed that the militia would form a ready defence against any usurpation of power on the part of the President.

Amendment III. Quartering of soldiers.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

The English authorities maintained the right of "bil-

leting soldiers" upon the colonists in time of peace, and this grievance was one of the causes of the American Revolution. It was maintained that "a man's house is his castle," and that he was justified in resisting all intrusions of this nature.

Amendment IV. General warrants.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

This Amendment, like the preceding, grew out of the desire to check any tendency on the part of the government to trample on the rights of personal liberty and private property. It was believed that the English authorities had disregarded these rights when they issued and strove to enforce the carrying out of the obnoxious Writs of Assistance.*

Amendment IX. Rights retained by the people.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Many clauses of the Constitution have in them an enumeration of certain personal rights retained by the people. Among these rights are the privileges of the writ of *habeas corpus* and of the right of trial by jury. Since all personal rights could not be thus enumerated, Amendment IX was evidently intended to apply to those not so designated.

Amendment X. Powers reserved to the States.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

A motion was made when this Amendment was being discussed in Congress that the words "expressly dele-

* Amendments V, VI, VII, and VIII have been discussed under the Judiciary, on page 310.

gated" be used. It was made to appear in the discussion that the Amendment, as given, was intended as an interpretation of the Constitution, and that, since it was impracticable to enumerate *all* of the powers of the general government, some must of necessity be implied (see pages 239–241).*

The Emancipation Proclamation granted freedom to all the slaves in the States then in rebellion. Delaware, Kentucky, Tennessee, Missouri, Maryland, and parts of Virginia and Louisiana do not appear in this list. Slaves were held in these States, and slavery still had a legal right to exist in them. Congress desired to settle the question, and February 1, 1865, proposed the XIIIth Amendment to the Constitution.

Amendment XIII, section 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2.

Congress shall have power to enforce this Article by appropriate legislation.

The wording of the Amendment is almost the same as that which pertains to slavery in the Ordinance for the Northwest Territory of 1787 and the Wilmot Proviso. After it was ratified by sixteen free States and eleven of the former slave-holding States, the requisite three-fourths, Mr. Seward, then Secretary of State, declared it to be a part of the Constitution of the United States, December 18, 1865.

Amendment XIV was proposed by Congress, June 16, 1866, as a part of the general plan for Reconstruction. The Southern States were not to be regarded as a part of the Union until they should ratify it.

* Amendment XI has been taken up under the Judiciary, page 307; Amendment XII has been considered in connection with the election of President and Vice-President, page 258.

Amendment XIV, section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The first section has already been partially discussed on page 222 under the question, Who are citizens.

Privileges or immunities of citizens. Story, Commentaries, § 1935.

The "privileges or immunities" of the section doubtless refer to the rights of the freedmen which had been defined by the Civil Rights Act of April 9, 1866. By this act, the "freedmen were to have the same rights in every State and Territory of the United States to make and enforce contracts; to sue, be parties, and give evidence; to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens and to be subject to the like punishments, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding." The right to vote is not enumerated, for it is a political right.

It was feared attempts would be made in some of the States to keep the negro in a condition of dependence through adverse legislation. To prevent this, the provision was made that no State should deprive "any person of life, liberty, or property without due process of law." The phrase, "due process of law" has been regarded in its legal effects, as equivalent to "the law of the land" which was defined by Webster in the Dartmouth College case as follows: "By the law of the land

Due process of law. Story, Commentaries, §§ 1940-1944.

is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society." *

Dartmouth College *v.* Woodward, 4 Wheaton, 519.

Congress believed that the leaders of the South in the Civil War should be deprived of some of their political privileges, and so framed section 3:

No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

Amendment XIV, section 3.

Congress has at different times removed the disabilities from certain of these classes. Finally, an act of June 6, 1898, removed the last disability imposed by this section.

30 United States Statutes at Large, 432.

It was feared there might be an attempt to repudiate the debt which had been incurred in the suppression of the Rebellion and also to pay the war debt of the seceding States. This led to the embodiment of section 4 as a part of the Amendment:

The validity of the public debt of the United States, authorized by law, including debts incurred for pay-

* Section 2 has been taken up in connection with the apportionment of Representatives, page 142. Pupils should read the entire Amendment as found in the Constitution, Appendix A.

ment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned.

Amendment XIV, section 4. *But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.*

Section 5. *The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.*

In order to secure full political rights for the negroes the XVth Amendment was passed as indicated on page 142.

Amendment XV, section 1. *The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.*

Section 2. *The Congress shall have power to enforce this article by appropriate legislation.*

Supplementary Questions and References.

1. What facts can be given showing the difficulty of amending the Articles of Confederation? Fiske, Critical Period, 218–220.

2. Is it now considered difficult to amend the Constitution? Bryce, American Commonwealth, I, 359–362 (368–371).

3. What were the conditions under which the Emancipation Proclamation was issued? Wilson, Division and Reunion, 226–228.

4. Was the adoption of the XVth Amendment a wise policy?

CHAPTER XXX

MISCELLANEOUS PROVISIONS

I. Debts Contracted Under the Confederation.

All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation. Amendment VI, clause 1.

A generally accepted principle of public law provides that the debts or other contracts of a nation remain valid even though the form of government should be changed. The framers of the Constitution desired thus publicly to declare that the new government was to recognize this moral obligation. No chapter in our history is of greater interest than that which relates to the carrying out of this principle by Alexander Hamilton.

II. Oath of Office.

The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States. Clause 3.

The form of oath to be taken was prescribed by Congress, June 1, 1789, and is still used. (This form is given on page 268.) Church and State were closely linked together in the European countries when the Con-

stitution was framed and a religious test was essential to office-holding in some of the thirteen original States. The desire to escape the abuses of such a system led to the wise provision that no religious test should ever be required for holding public office under the National government.

CHAPTER XXXI

THE RELATIONS OF STATES AND NATION

We have now studied in succession the local, State, and National governments of our country. Since the local units are subordinate to the States of which they are divisions, there remain to be considered the relations that exist between the State and National systems.

We should first observe that the States are not mere administrative divisions of the Nation. They do not stand in the same relation to the Nation that counties bear to a State. They do not derive their powers from the National government, nor, on the other hand, does the latter derive its powers from the States. The source of power for both is the same—"the people themselves, as an organized body politic." * The United States is, then, a *Federal Republic.* This is very different, on the one hand, from a confederation, such as existed in this country between 1781 and 1789, and, on the other hand, from a centralized republic, such as exists to-day in France. In the former case, the National government rested upon the States and could exercise its most important powers only through them. In France, the "departments" (which may be compared to our States) are merely local administrative divisions of the nation, and possess no original powers of government. Our Federal Republic is more complex than either of these systems; but in efficiency it far excels the Confederacy, and in its adaptation to the circumstances of the people

A Federal Republic.

* Cooley, Constitutional Limitations, 205.

it is infinitely better than a centralized government would be.

The division of powers between State governments and the National government.

The peculiarity of our government lies in the division of powers between State and National authorities. Historically, and from a legal point of view, we should first think of all governmental powers as originating in the people. Of these powers,

1. Some are exercised by State authorities.

2. Others are delegated to the National government.

The powers belonging to the first group are nowhere enumerated, because it is neither necessary nor possible to anticipate all of them. They are the *reserved powers* mentioned in the 10th Amendment to the United States Constitution. The powers of the second group are enumerated in the Constitution; they are vested in the legislative, executive, and judicial branches of the National government. We see, then, that local self-government is preserved in the States for State purposes; and that the National government was created to fulfil National purposes, by a direct grant of power from the people.

In determining this division of powers, it becomes necessary to make two other groups:

3. Some specific powers are denied to the United States.*

4. Others are denied to the States.†

Some of these prohibitions are necessary in order that the parts of our double system of government may work harmoniously. Evidently, too, the people intend that some powers shall not be exercised by either State or National authorities, since they are denied to both. In this way, certain ancient liberties are preserved.

5. Finally, there is a group called *concurrent powers*,

* See Article I, section 9, and Amendments I–VIII and XI.

† See Article I, section 10, and Amendments XIII–XV.

because they may be exercised by both State and National governments.

We have spoken as though there were two governments, but in reality there is but one. Its parts (State and National) are distinct but not separate.* They fit into and harmonize with each other. Each is necessary to the existence of the other. In the analysis of our government from a legal point of view, we examine them separately; but in the bestowal of our patriotic allegiance as citizens no such separation is possible. **But one government.**

Such is the theory of our government. Its practical workings are not so simple, for very often the line of division between State and Federal powers is doubtful. In tracing this line, the courts have constantly had in view that clause of the Constitution which says:

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. **Article VI, clause 2.**

The doctrine of National sovereignty (*i.e.*, the supreme authority of the National government over every State and every individual) became fully established, subject to dispute from no authoritative source whatever, only after the Civil War and the events that followed. But this doctrine is to be viewed in the light of a larger fact, *viz.*, that the National government possesses only delegated powers, and it is only within the sphere of these powers that the National authority is supreme. "When a particular power is found to belong to the States, they are entitled to the same complete independence in its exercise as is the National government in **National sovereignty**

* Wilson, The State, 480–483.

wielding its own authority. Each within its sphere has sovereign powers." *

We have seen that it is the duty of the courts to determine, when cases come before them, the limits of State and National jurisdiction. In the last resort, the Supreme Court of the United States decides whether any act of either government is Constitutional. The National government is, therefore, the final judge of the extent of its own powers, as well as of State powers when State and National authority seem to conflict. During most of our history the doctrine was held by eminent persons that, in the event of such a conflict, a State might legally decide for itself which authority should prevail. The doctrine of "State Sovereignty" was enunciated in the Virginia Resolutions of 1798 by Madison; in the Kentucky Resolutions of the same year by Jefferson, and in the Resolutions of the Hartford Convention (1814). The doctrine found its logical conclusion in the nullification of a Federal law by South Carolina in 1832. Carried to its extreme limits, State sovereignty became the grounds of justification for the secession of the southern States at the opening of the Civil War. The doctrine received its death-blow in the events of that period. The success of the National idea seemed for a time to endanger the preservation of the true theory of our government, by threatening the complete dominance of National over State authority. But the Supreme Court of the United States is guardian of State and National powers alike, and its decisions have held firmly to the lines of division that have been indicated in the preceding discussion.

State Sovereignty.

As a further statement of this division, it may be said that the States are presumed to have jurisdiction over all subjects of legislation, except as their powers are

* Cooley, Principles of Constitutional Law, 34.

limited (1) by the National Constitution, (2) by the State constitutions. The National government, on the other hand, is presumed to have only such powers as are delegated to it (either specifically or by implication) in the Constitution of the United States.

At its foundation, that double system which we call "the government of the United States" rests upon the people. They have not finally determined its character, but have reserved the right to modify its form by the process of amendment, and to change its policy by the periodical election of officers.

Supplementary Questions and References.

1. The government of France is described in Wilson, The State, 214–223.

2. Switzerland is also a republic; what are the main features of its government? Wilson, 305–333.

3. What are some of the most important among the reserved powers of the States? How are similar powers exercised in England? Wilson, 487–488.

4. Make lists of powers (1) delegated to the National government; (2) denied to it; (3) prohibited to the States; and (4) to both. (5) What powers would you classify as concurrent?

5. Is it accurate to say that the National government has "more powers" than the States? That it is "stronger" than the States?

6. What is the English Constitution? Bryce, I, 237–238 (241–242). Why may an act of Parliament be unconstitutional and yet valid? Bryce, I, 245–246 (250–251).

7. Can you mention State and National laws that have been declared unconstitutional by the Supreme Court?

CHAPTER XXXII

SOME FEATURES OF INTERNATIONAL LAW AND ARBITRATION

We have considered some of the ways in which our government is brought into direct relations with foreign powers, such as extradition, the postal system, naturalization, and privateering. It is especially to be noted that during the nineteenth century there was a marked advance toward the settlement of controversies between nations according to the principles of international law and through courts of arbitration. It will be of interest, therefore, to consider a few of the leading principles which have tended to prevent wars and lessen the suffering and destruction incident to warfare, and to note the relation of the United States to these forward movements.

Nature and origin of international law.

According to the definition given on page 233, international law refers to the usages which have been established between civilized nations, but more narrowly interpreted it pertains to that body of rules which are accepted by the six great European powers and the United States. Strictly speaking, Hugo Grotius, a political exile from Holland residing in Paris, became the founder of international law through the publication, in 1625, of his "De Jure Belli ac Pactis," a book which has been declared to have altered the history of the world. "Additions have been made to this great work slowly and imperceptibly as the public opinion of the

civilized world decides new cases or grows to greater heights of humanity and justice." *

Some of the most difficult international problems have arisen over the attempts to define the rights of neutral nations, especially on the high seas, and the treatment of merchant ships and other private property during the time of war. National usage varied until the year 1856, when the great nations (the United States and Spain excepted), in the Congress at Paris, gave the chief impulse to united action by agreeing to the four significant principles: 1. Privateering is and remains abolished; 2. The neutral flag covers an enemy's goods, with the exception of contraband of war; 3. Neutral goods with the exception of contraband of war are not liable to capture under the enemy's flag; 4. Blockades in order to be binding must be effective.

Paris Congress, 1856.

By the year 1861 forty-six sovereign States had agreed to accept these principles. The United States government asserted that *all* private property at sea should be exempt from capture and confiscation, except in the cases of the violation of a blockade and contraband of war, and refused, in consequence, to sanction the Paris Declaration. In treaties made with individual nations, however, the United States accepted these principles and, in 1898, on the occasion of the outbreak of the Spanish-American War, our government issued decrees upon the subjects mentioned below.

The United States and the Rule of 1856.

1. No privateers were to be allowed. (See page 234.) 2. The blockade of the forts on the coasts of Cuba should be made effective. 3. Contraband of war was to be carefully defined. The articles declared to be absolutely contraband were: "Ordnance, machine-guns and their appliances and the parts thereof; armor plate and whatever pertains to the offensive and defensive armament of naval vessels; arms and instruments of iron, steel, brass, or copper,

Contraband of war.

* Lawrence, The Principles of International Law, 54.

or any other material, such arms and instruments being especially adapted for use in war by land or sea; torpedoes and their appurtenances; cases for mines, of whatever material; engineering and transport materials, such as gun-carriages, caissons, cartridge-boxes, campaigning forges, canteens, pontoons; ordnance stores; portable range-finders; signal flags destined for naval use; ammunition and explosives of all kinds; machinery for the manufacture of arms and munitions of war; saltpetre, military accoutrements and equipments of all sorts; horses." The "conditionally contraband" articles mentioned were the following: "Coal when destined for a naval station, a port of call, or a ship or ships of the enemy; materials for the construction of railroads and telegraphs, and money, when such material or money are destined for an enemy's forces; provisions when destined for an enemy's ship or ships, or for a place that is besieged."

Spain declared that the last three articles of the Declaration of Paris were to be enforced, but maintained the right, as already indicated, to grant letters of marque to privateers.

The Geneva Convention, 1864.

In the International Convention, at Geneva, in 1864, another marked advance was made. By this agreement, which has been accepted by nearly all the civilized powers of the world, hospitals and all articles intended for the use of the sick and wounded, together with all surgeons, nurses, and other persons engaged in caring for them, are not subject to capture if they are protected by the badge having a red cross upon a white ground. This emblem is placed on the flag or is worn on the arm as the case may be.

From the time of Grotius, appeals were made by individuals and congresses for the lessening of the grosser severities of warfare, but these ideas were not put into practical form until the year 1863. President Lincoln, in that year, decreed that the armies of the United States should be governed by the code of rules which had been prepared on the request of Mr. Lincoln by Francis Lieber. A similar manual was afterward adopted by the various European powers, and the general principles were adopted as an international code by the Brussels Conference of 1874, in which the leading States of Europe were represented.

The Brussels Conference, 1874.

International Arbitration.

International Arbitration signifies the agreement on the part of two nations in dispute to submit their differences to an independent tribunal and abide by its decision. Great progress was made during the nineteenth century toward this much-desired goal. Our own government has hastened this advance, for it has been a party to about fifty out of one hundred and twenty arbitrations. Questions settled in this manner, such as boundary, damages inflicted by war or civil disturbances, and injuries to commerce, would formerly have led to war. Twenty of these cases have been between the United States and Great Britain, and a settlement was effected when, at times, it seemed as if war could not be averted. Among others may be mentioned the Alabama Question, which was decided by the Geneva Conference in 1871, and the Behring Sea Seal Fisheries Question, which was finally settled by a tribunal at Paris in 1893.

The work of The Hague Peace Conference, which met May 18, 1899, constituted a fitting close to the efforts which were put forth during the century to bring about conciliation through arbitration. The Conference assembled in response to an invitation issued by the Czar of Russia "on behalf of disarmament and the permanent peace of the world." One hundred and ten delegates were present, representing twenty-six different powers, of which the United States was one. The delegates were divided into three commissions, each having separate subjects for consideration.

The Hague Conference, 1899.

1. The first commission adopted unanimously the resolution that "the limitation of the military charges which so oppress the world is greatly to be desired," but agreed that this could not now be accomplished through an international compact.

Work of the commissions.

2. In the second commission a revision of the Declaration of Brussels concerning the rules of war was made. It was agreed by the entire Conference that a new Convention for this purpose should be called, and that the protection offered by the red cross as agreed upon in the Geneva Convention should also be extended to naval warfare.

3. The proposition expressing the desire that international conflicts might in the future be settled through arbitration was considered by the third commission. Said the late ex-President Harrison: "The greatest achievement of The Hague Conference was the establishment of an absolutely impartial judicial tribunal." Some of the leading features of this permanent Court of Arbitration were provided for as follows: 1. Each nation which agreed to the proposition was to appoint, within three months, four or more persons of recognized competency in international law, who were to serve for six years as members of the International Court. 2. An International Bureau was established at the Hague for the purpose of carrying on all intercourse between the signatory Powers relative to the meetings of the Court, and to serve also as the recording office for the Court. 3. Nations in dispute may select from the list of names appointed as above, and submitted to them by the Bureau, those persons whom they desire to act as arbitrators. 4. The meetings of the Court are to be held at The Hague, unless some other place is stipulated by the nations in the controversy. This Court was convened for the first time May 18, 1901. It is readily seen that the advantages of such a court are that unprejudiced arbitrators are selected; rules of procedure are defined; and that decisions rendered are more liable to be accepted in future cases, and thus a code will be formed.

International Court of Arbitration.

SUGGESTIVE QUESTIONS AND REFERENCES.

1. The Peace Conference at The Hague. N. A. Rev., 168 : 771–778 ; 169 : 604–624 ; 625–639 ; N. Eng. Mag., 19 : 580–585 ; Forum, 28 : 1–12 ; Outlook, 62 : 22–25 ; Reasons for Russia's desire for peace ; Rev. of R's, 18 : 376–377 ; 19 : 432–434.

2. The text of the arbitration agreement made at The Hague Conference is found in Rev. of R's, 21 : 51–55 ; Moore, What the Arbitration Treaty is Not, Rev. of R's, 21 : 50–51.

3. What was the arbitration treaty negotiated with England in 1897? Forum, 23 : 13–22 ; 23–27 ; Outlook, 55 : 223–224 ; Fiske, Atl. Mo., 79 : 399–408 ; For what reasons was the treaty rejected by the Senate? Outlook, 55 : 960–961.

APPENDIX A

CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America

ARTICLE I.

Section I. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

Sect. II. 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the

United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SECT. III. 1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECT. IV. 1. The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECT. V. 1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECT. VI. 1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the treasury of the United States. They shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emolu-

ments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECT. VII. 1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECT. VIII. The Congress shall have power

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas and offences against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

16. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State, in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof.

SECT. IX. 1. The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year 1808; but a tax or duty may be imposed on such importation, not exceeding $10 for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECT. X. 1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

3. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

4. No person except a natural born citizen, or a citizen of the

United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5. In case of the removal of the President from office or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

6. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

7. Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

SECT. II. 1. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECT. III. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECT. IV. The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION I. 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECT. II. 1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made or which shall be made, under their authority; — to all cases affecting ambassadors, other public ministers and consuls; — to all cases of admiralty jurisdiction; — to controversies to which the United States shall be a party; — to controversies between two or more States; — between a State and citizens of another State; — between citizens of different States; — between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction,

both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECT. III. 1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION I. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECT. II. 1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECT. III. 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECT. IV. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendments which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several

States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present, the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

[Signed by] Gº WASHINGTON,
Presidt and Deputy from Virginia.

NEW HAMPSHIRE.	PENNSYLVANIA.	VIRGINIA.
John Langdon,	B Franklin,	John Blair,
Nicholas Gilman.	Thomas Mifflin,	James Madison, Jr.
MASSACHUSETTS.	Robt. Morris,	NORTH CAROLINA.
Nathaniel Gorham,	Geo. Clymer,	Wm. Blount,
Rufus King.	Tho. Fitz Simons,	Richd. Dobbs Spaight,
CONNECTICUT.	Jared Ingersoll,	Hu Williamson.
Wm. Saml. Johnson,	James Wilson,	SOUTH CAROLINA.
Roger Sherman.	Gouv Morris.	J. Rutledge,
NEW YORK.	DELAWARE.	Charles Cotesworth Pinckney,
Alexander Hamilton.	Geo: Read,	Charles Pinckney,
NEW JERSEY.	Gunning Bedford, Jun,	Pierce Butler.
Wil: Livingston,	John Dickinson,	GEORGIA.
David Brearley,	Richard Bassett,	William Fen,
Wm: Paterson,	Jaco: Broom.	Abr Baldwin.
Jona: Dayton.	MARYLAND.	
	James McHenry,	
	Dan of St. Thos. Jenifer,	
	Danl Carroll.	

Attest: William Jackson, *Secretary.*

ARTICLES IN ADDITION TO AND AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

ARTICLE I.—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.—A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE III.—No soldier shall, in time of peace be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.—In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.—The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.—The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.—The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

ARTICLE XII.—1. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate; — the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall de-

volve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. — The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.—Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.—Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any

office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two thirds of each house, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

ARTICLE XV.—Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

APPENDIX AA

ARTICLES OF CONFEDERATION[1]

Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE I.—The style of this Confederacy shall be, "The United States of America."

ART. II.—Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled.

ART. III.—The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ART. IV.—The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State, and shall enjoy therein all the privileges of trade and commerce subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction shall be laid by any State on the property of

the United States or either of them. If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State shall flee from justice and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense. Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. V.—For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the Legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year. No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States for which he, or another for his benefit, receives any salary, fees, or emolument of any kind. Each State shall maintain its own delegates in any meeting of the States and while they act as members of the Committee of the States. In determining questions in the United States in Congress assembled, each State shall have one vote. Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonment during the time of their going to and from, and attendance on, Congress, except for treason, felony, or breach of the peace.

ART. VI.—No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States, in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States, in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defense of such State or its trade, nor shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use in public stores a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States, in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

ART. VII.—When land forces are raised by any State for the common defense, all officers of or under the rank of Colonel shall

be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ART. VIII.—All charges of war, and all other expenses that shall be incurred for the common defense, or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States, within the time agreed upon by the United States, in Congress assembled.

ART. IX.—The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth Article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatever; of establishing rules for deciding, in all cases, what captures on land and water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States, in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State

in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned; provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions,

as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States, in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State, and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white

inhabitants in such State, which requisition shall be binding; and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number can not be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations as in their judgment require secrecy; and the yeas and nays of the delegates of each State, on

any question, shall be entered on the journal when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal except such parts as are above excepted, to lay before the Legislatures of the several States.

ART. X.—The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ART. XI.—Canada, acceding to this Confederation, and joining in the measures of the United States shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ART. XII.—All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. XIII.—Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

AND WHEREAS it hath pleased the great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress to approve of, and to authorize us to ratify, the said Articles of Confederation and perpetual Union, know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and

perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions which by the said Confederation are submitted to them; and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual. In witness whereof, we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

APPENDIX B

KEY TO PERIODICAL LITERATURE

	Arena	Atlantic Monthly	Century Magazine	Cosmopolitan	Forum	Harper's Magazine	New England Magazine	North American Review	Outlook	Popular Science Monthly	Review of Reviews	Scribner's Magazine
1890..	1, 2	65, 66	39, 40[1] 17, 18[2]	8, 9	9, 10	80, 81	2, 3	150, 151	34, 35 36	36, 37	1, 2	7, 8
1891..	3, 4	67, 68	41, 42 19, 20	10, 11	11, 12	82, 83	4, 5	152, 153	37, 38 39	38, 39	3, 4	9, 10
1892..	5, 6	69, 70	43, 44 21, 22	12, 13	13, 14	84, 85	6, 7	154, 155	40, 41 42	40, 41	5, 6	11, 12
1893..	7, 8	71, 72	45, 46 23, 24	14, 15	15, 16	86, 87	8, 9	156, 157	43, 44 45	42, 43	7, 8	13, 14
1894..	9, 10	73, 74	47, 48 25, 26	16, 17	17, 18	88, 89	10, 11	158, 159	46, 47 48	44, 45	9, 10	15, 16
1895..	11, 12 13, 14	75, 76	49, 50 27, 28	18, 19	19, 20	90, 91	12, 13	160, 161	49, 50 51	46, 47	11, 12	17, 18
1896..	15, 16	77, 78	51, 52 29, 30	20, 21	21, 22	92, 93	14, 15	162, 163	52, 53 54	48, 49	13, 14	19, 20
1897..	17, 18	79, 80	53, 54 31, 32	22, 23	23, 24	94, 95	16, 17	164, 165	55, 56 57	50, 51	15, 16	21, 22
1898..	19, 20	81, 82	55, 56 33, 34	24, 25	25, 26	96, 97	18, 19	166, 167	58, 59 60	52, 53	17, 18	23, 24
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1901..	25	87	61 39	30	31	102	24		67, 68 69	58	23	29

[1] Old Series. [2] New Series.

APPENDIX C

REFERENCE BOOKS

The books named in the lists that follow have been used in the preparation of this volume. Those marked (*) are especially recommended for high schools.

Original Sources

*American History Leaflets. Lovell.
*Hart, American History Told by Contemporaries. Macmillan.
Elliot, Debates, 5 volumes.
*The Federalist. Scott, Foresman & Co.
*Madison, Journal of the Constitutional Convention. Scott, Foresman & Co.
*Old South Leaflets. Heath.

Publications of the Government Printing Office, Washington

*Abridgment of the President's Message and Accompanying Documents.
Bulletins of the Bureau of American Republics.
*Civil Service Commission, Annual Reports.
*Commissioner of Labor, Annual and Special Reports.
*Commissioner of Education, Annual Reports.
*Congressional Directory.
*Congressional Record.
Consular Reports.
Donaldson, Public Domain.
*Finance Reports. (Secretary of the Treasury.)
*Interstate Commerce Commission, Annual Reports.
*Manual and Digest of the House of Representatives.
*Public Debt Statement.
*Statistical Abstract.

SPECIAL PUBLICATIONS (not by the Government)

International Prison Conference Reports.

Proceedings of the National Conference of Charities and Corrections.

GENERAL WORKS

*Alton, Among the Law Makers. Scribner.

Andrews, An Honest Dollar. Hartford Student Pub. Co.

*Andrews, History of the Last Quarter Century. Scribner.

Bagehot, The English Constitution. Appleton.

*Bancroft, History of the United States. Appleton.

*Bliss, Encyclopedia of Social Reform. Funk & Wagnalls Co.

Boone, Education in the United States. Appleton.

Brooks, How the Republic is Governed. Scribner.

*Bryce, American Commonwealth. Macmillan.

Bullock, Introduction to the Study of Economics. Silver, Burdett & Co.

*Burgess, The Middle Period. Scribner.

*Channing, A Student's History of the United States. Macmillan.

Cooley, Constitutional Limitations. Little, Brown & Co.

*Cooley, Principles of Constitutional Law. Little, Brown & Co.

*Curtis, The United States and Foreign Powers. Scribner.

*Clow, Introduction to the Study of Commerce. Silver, Burdett & Co.

Commons, Proportional Representation. Crowell.

*Conkling, City Government in the United States. Appleton.

*Dole, Talks About Law. Houghton, Mifflin & Co.

Devlin, Municipal Reform in the United States. Putnam.

Earle, Child Life in Colonial Days. Macmillan.

Earle, Curious Punishments of By-gone Days. H. E. Stone & Co.

Ely, Problems of To-day. Crowell.

*Ely, Outlines of Economics. Macmillan.

Ely, Trusts and Monopolies. Macmillan.

Ely, Taxation in American States and Cities. Crowell.

Fisher, S. G., The Evolution of the Constitution of the United States. Lippincott.

*Fisher, The Colonial Era. Scribner.

*Fiske, Beginnings of New England. Houghton, Mifflin & Co.

Fiske, Old Virginia and Her Neighbors. Houghton, Mifflin & Co.

*Fiske, American Revolution. Houghton, Mifflin & Co.
*Fiske, Critical Period of American History. Houghton, Mifflin & Co.
*Fiske, Civil Government in the United States. Houghton, Mifflin & Co.
Follett, The Speaker. Longmans.
Frothingham, Rise of the Republic. Little, Brown & Co.
Godkin, Problems of Democracy. Scribner.
Goodnow, Municipal Problems. Macmillan
Grinnell, The Indians of To-day. Stone.
*Harrison, This Country of Ours. Scribner.
Hart, Essays on American Government Longmans, Green & Co.
*Hart, Formation of the Union. Longmans, Green & Co.
Hinsdale, The Old Northwest. Silver, Burdett & Co.
*Hinsdale, The American Government. Werner School Book Co.
Hitchcock, American State Constitutions. Putnam.
*Hosmer, Samuel Adams. American Statesmen Series. Houghton, Mifflin & Co.
Howe, Taxation and Taxes in the United States Under the Internal Revenue System. Crowell.
Jenks, The Trust Problem. McClure, Phillips & Co.
*Johnston, American Politics. Holt.
Knox, United States Notes. Scribner.
Laughlin, Elements of Political Economy. Appleton.
Lawrence, The Principles of International Law. Heath.
*Lodge, Alexander Hamilton. American Statesmen Series. Houghton, Mifflin & Co.
*Macy, Our Government. Ginn.
*Magruder, John Marshall. American Statesmen Series. Houghton, Mifflin & Co.
McConachie, Congressional Committees. Crowell.
*McMaster, History of the People of the United States. Appleton.
*McLaughlin, History of the American Nation. Appleton.
Municipal Program, A. Macmillan.
*Newspaper Almanacs.
*Noyes, Thirty Years of American Finance (1865–1896). Putnam.
Plehn, Introduction to Public Finance. Macmillan.
Remsen, Primary Elections. Putnam.
Riis, How the Other Half Lives. Scribner.
Robinson, Elementary Law. Little, Brown & Co.

*Schouler, History of the United States. Dodd, Mead & Co.
Seligman, Essays on Taxation. Macmillan.
Shaw, Municipal Government in Continental Europe. The Century Co.
Shaw, Municipal Government in Great Britain. The Century Co.
*Sloane, The French War and the Revolution. Scribner.
Sparling, Municipal History and Present Organization of the City of Chicago. Bulletin 23, University of Wisconsin.
Stanwood, History of Presidential Elections. Houghton, Mifflin & Co.
Stearns, Columbian History of Education in Wisconsin.
Story, Commentaries on the Constitution.
Stevens, Sources of the Constitution of the United States. Macmillan.
Taussig, The Silver Situation in the United States. Putnam.
*Taussig, Tariff History of the United States. Putnam.
Thwaites, The Colonies. Longmans, Green & Co.
Tolman, Municipal Reform Movements. Revell.
Tyler, Patrick Henry. American Statesmen Series. Houghton, Mifflin & Co.
Walker, Political Economy. Holt.
*Walker, The Making of the Nation. Scribner.
Watson, History of American Coinage. Putnam.
Warner, American Charities. Crowell.
White, Money and Banking. Ginn.
*Wilcox, The Study of City Government. Macmillan.
*Wilson, The State. Heath.
*Wilson, Congressional Government. Houghton, Mifflin & Co.
*Wilson, Division and Reunion. Longmans, Green & Co.
Wines and Koren, The Liquor Problem in its Legislative Aspects. Houghton, Mifflin & Co.
Wright, Industrial Evolution of the United States. Flood & Vincent.
*Wright, Practical Sociology. Longmans, Green & Co.

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